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1   UNITED STATES DISTRICT COURT
                        DISTRICT OF NEVADA
2   BEFORE THE HONORABLE LARRY R. HICKS, SENIOR DISTRICT JUDGE
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4   ORACLE USA, INC., et al,   :
                                     :
5   Plaintiffs,   :
                                     : No. 2:10-cv-0106-LRH-VCF
6   -vs-   :
                                     : September 24, 2021
7   RIMINI STREET, INC., et al,   :
                                     : Reno, Nevada
8   Defendants.   :
                                     : Volume 5
9   _____:

10

11   TRANSCRIPT OF EVIDENTIARY HEARING

12

13   APPEARANCES:

14   FOR THE PLAINTIFF: Richard J. Pocker
                               Benjamin P. Smith
15   William A. Isaacson
                               Jessica Phillips
16   Sharon R. Smith
                               Corey Houmand
17   Zachary Hill
                               Attorneys at Law
18

19   FOR THE DEFENDANTS: W. West Allen
                               Eric Vandevelde
20   Samuel G. Liversidge
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21   Casey J. McCracken
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23   Reported by: Margaret E. Griener, CCR #3, FCRR
                               Official Reporter
24   400 South Virginia Street
                               Reno, Nevada 89501
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1   RENO, NEVADA, FRIDAY, SEPTEMBER 24, 2021, 9:05 A.M.

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4   THE COURT: Good morning. Have a seat, please.

5   The record will show that we're reconvened on

6   Friday morning, our fifth day.

7   Let me inquire of counsel. I'm interested in

8   counsel's assessment of how much longer counsel anticipate

9   going. I notice that everyone is within the schedule I had

10 originally entered in my order. So what can you tell me?

11   MR. VANDEVELDE: Your Honor, I think we're well

12 within the three days allotted for our side, but we have three

13 more witnesses -- four more witnesses.

14   THE COURT: All right.

15   And do you see us going over to Monday, which

16 would actually be your third day?

17   MR. VANDEVELDE: It would depend on the length

18 of cross-examination.

19   THE COURT: Okay.

20   MR. VANDEVELDE: But I would think that even

21 with cross-examination being modest, that we would finish by

22 Monday. That's what my anticipation would be.

23   THE COURT: All right.

24   Mr. Isaacson?

25   MR. ISAACSON: So we had two witnesses disclosed

1   from them for today, leaving two for Monday, plus your

2   designations, so I'm unclear as to what's happening today as

3   opposed to Monday.

4   But I agree we could finish -- I would like to

5   know which witnesses are coming, but separate from that, I

6   agree we could finish up witnesses on Monday, do the rebuttal

7   case, and finish closings at the end of the day.

8   THE COURT: Okay. So the sense is, is that we

9   will finish on Monday, is that what I'm picking up?

10   I'm not holding anyone firmly to that.

11   MR. VANDEVELDE: Yeah, I think -- and I think

12 they know our witness list, there's only five.

13   Ms. Davenport would be next, and then

14 Mr. Astrachan -- Professor Astrachan, and we have two more

15 after that, Craig MacKereth and Stephen Lanchak.

16   I think those should be done by Monday. I would

17 anticipate that closings would be Tuesday, I think, more

18 likely, but between those, it's hard to tell.

19   THE COURT: All right. Well that gives me a

20 sense of where we are. I was concerned about my schedule next

21 week is why I asked the question.

22   MR. VANDEVELDE: Understood.

23   THE COURT: Okay. One other matter I had

24 noticed. Originally in my order earlier in the month about

25 this hearing, I had stated that I would give the parties

1   30 days to submit the proposed findings and conclusions.

2   That strikes me as much more time than counsel

3   would really need, and I would rather move that up, so I'm

4   thinking two weeks from when we finish, a 14-day schedule.

5   MR. ISAACSON: That's fine, your Honor.

6   MR. VANDEVELDE: Yeah, that's fine, your Honor.

7   THE COURT: All right. So coming back, I think

8   we had some redirect examination by Mr. McCracken.

9   MR. McCRACKEN: Your Honor, we have no further

10   questions of Mr. Benge. We ask that he be excused.

11   THE COURT: All right. Thank you very much, and

12   he may be.

13   Does Oracle have any objection to excusing

14   Mr. Benge at this time?

15   MR. ISAACSON: No, your Honor. I just have to

16   clean up something with exhibits.

17   THE COURT: All right.

18   MR. ISAACSON: I had spoken to the witness about

19   Oracle Exhibit 30, or OREX_30, and there's no objection to our

20   admitting that.

21   And then your Honor may or may not recall that

22   during the cross-examination of Mr. Benge that I showed him

23   and read out loud an excerpt from the deposition of Seth

24   Ravin. This is page 22, lines 3 through 16, which discussed

25   how he received reports from the compliance department about

1   violations of the Acceptable Use Policy.

2   We have -- that was read out loud. It's a party

3   admission. We would like to move it and mark it as

4   Exhibit 1352, and I understand there's an objection to that.

5   MR. MCCRACKEN: Yes, your Honor. We object to

6   that. There was a procedure in the prehearing order for

7   deposition designations which would allow us to do

8   counterdesignations.

9   They played the deposition of Mr. Ravin, I think

10 it was yesterday, so there's a whole procedure for this that

11 they didn't follow.

12   The fact that the deposition was part of his

13 question to the witness who didn't know anything about it,

14 doesn't make it evidence, so we object.

15   THE COURT: All right. Well, I'm going to admit

16 it because it's certainly been before the Court. It was part

17 of the record, and, as everyone knows, our court reporters

18 aren't expected to report deposition testimony that happens to

19 be played in the courtroom.

20   But I also appreciate the objection on behalf

21 of -- on behalf of Rimini, but I will admit it based upon

22 those comments.

23   MR. McCRACKEN: And just for the record --

24   THE COURT: And 30, I assume there's no

25 objection --

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1   MR. McCRACKEN: Just for the record -- there's

2   no objection to Exhibit 30.

3   THE COURT: All right. It's admitted.

4   (Plaintiff's Document Exhibit 30 received
                       in evidence.)

5   MR. MCCRACKEN: But just for the record,

6   Mr. Isaacson, you're only -- it's not the whole 1352 that you

7   moved, It's the portions you read out loud?

8   MR. ISAACSON: Correct. It would be -- 1352

9   will consist of page 22, lines 3 through 16, which are the

10 lines I read out loud.

11   MR. MCCRACKEN: Okay. Thank you.

12   MR. ISAACSON: I may have skipped a word or two,

13 but that was --

14   MR. McCRACKEN: I understand.

15   THE COURT: Okay. And that's the Court's

16 understanding as well.

17   (Plaintiff's Deposition Excerpt Exhibit
                       1352 received in evidence.)

18   THE COURT: All right. What's next?

19   MS. SAMPLIN: Your Honor, Rimini calls Brenda

20 Davenport as its next witness, and she will be appearing

21 virtually by Zoom.

22   THE COURT: All right. It take a few minutes to

23 get this connected.

24   Katie, would it be preferable to take a short

25 recess or are you comfortable with --

1   THE CLERK: I'm comfortable.

2   THE COURT: All right. Let's do that.

3   (Proceedings paused.)

4   THE CLERK: May I swear her in?

5   THE COURT: Yes, go ahead, please.

6   BRENDA CROUCH-DAVENPORT
         called as a witness on behalf of the Defendant,
7   was sworn and testified as follows:

8   THE CLERK: And, ma'am, if I can ask you to

9   please speak up.

10   Will you please state your name for the record.

11   THE WITNESS: Yes, it's Brenda Crouch-Davenport.

12   THE CLERK: Will you please spell your last

13   name.

14   THE WITNESS: It's hyphenated. It's

15   C-r-o-u-c-h, dash, D-a-v-e-n-p-o-r-t.

16   THE CLERK: Thank you.

17   THE WITNESS: Can you hear me okay?

18   THE CLERK: I think so.

19   DIRECT EXAMINATION

20   BY MS. SAMPLIN:

21   Q   Good morning, Ms. Davenport. Thank you for being here

22   today.

23   Can you just tell the Court why you are appearing

24   virtually today?

25   A   I can, and thank you for asking that question.

1   I didn't feel comfortable traveling with the

2   pandemic, and so I'm very thankful for the Court for allowing

3   me to testify remotely today. So, I do appreciate that, thank

4   you.

5   Q   Ms. Davenport, where do you currently work?

6   A   Rimini Street.

7   Q   And for how long have you been working at Rimini Street?

8   A   It's a little over 13 years.

9   Q   When did you first join Rimini Street?

10 A   October 20th of 2008.

11 Q   Can you please tell the Court some of the roles you've

12 had over the course of your 13-year career at Rimini.

13 A   Sure. All of my jobs here at Rimini Street have been in

14 the quality assurance department. I began as a Senior QA

15 Engineer and then began promoting throughout the management

16 section of the quality assurance team.

17   I've been the Manager, Senior Manager, Director,

18 Senior Director, Vice-President, and, recently, Global

19 Vice-President.

20 Q   What is quality assurance?

21 A   Quality assurance is ensuring that what we have

22 developed, the tax and regulatory update, making sure that

23 what has been developed is working correctly as we expect in

24 each of our clients' specific environment.

25 Q   And what is your current job title at Rimini today?

1   A   Global Vice-President of Quality Assurance.

2   Q   Did you have any quality assurance experience before

3   joining Rimini Street?

4   A   I did. I began working with quality assurance in 1999,

5   so I have over 20 years.

6   Q   Today at Rimini Street how many people are on the global

7   quality assurance team that you oversee?

8   A   Eight-two.

9   Q   And where is your team physically located?

10   A   My team is global, so we have of course the US and India,

11   or Hyderabad and Bangalore, and then I have Australia and

12   London.

13   Q   Now, you mentioned tax and regulatory updates, and we've

14   heard a lot about tax and regulatory updates at this hearing

15   so far. Does your team develop those tax and regulatory

16   updates for Rimini's client?

17   A   No, we do not develop, we test.

18   Q   So does your team test the updates that Rimini develops

19   for its PeopleSoft clients?

20   A   Yes, we test.

21   Q   And what is the purpose of that testing done by your

22   quality assurance team?

23   A   So my team's responsibility is to make sure that when the

24   tax and regulatory update is developed that they go in, in

25   each specific client's environment, and test that update to

1   make sure that we have the expected outcome.

2   Q   Are there different types of tests that your team runs?

3   A   Yes, there's individual update testing and bundle

4   testing.

5   Q   What is an individual update test?

6   A   An individual update test is specific to one tax

7   and regulatory change. So when the -- they go in, and the

8   development team develops it in each of our clients, and then

9   they package it with the documentation and put it out there

10   for the QA team to apply to our QA testing environment on the

11   client side.

12   And then my team goes in and ensures that it's

13   calculating, for example, or a page looks correct, whatever it

14   may be. They are validating the outcome of it to ensure it's

15   correct.

16   Q   And what is the difference between an individual test and

17   a bundle test?

18   A   So an individual test is one specific tax and regulatory

19   change, where a bundle test is a package -- or a formal

20   delivery that we give the client that has a group of

21   individual updates.

22   They're bundled together, and they are -- the code

23   is merge, for example, and the documentation lists all the

24   objects in that bundle, and then we go in and test that as

25   well.

1   Q   So the bundle test tests multiple individual updates

2   within the bundle; is that correct?

3   A   Yes, it is. And it's -- I know -- an individual update

4   is actually tested twice.

5   Q   What is the --

6   A   (Unintelligible).

7   Q   I'm sorry?

8   COURT REPORTER: I didn't hear that.

9   BY MS. SAMPLIN:

10 Q   Can you say the end your answer again, Ms. Davenport?

11 A   Yes. It's tested in individual update as well as in the

12 bundle. So it's essentially tested twice.

13 Q   Now, what is the first step of quality assurance testing?

14 A   Our first step is actually to go review the tax and

15 regulatory change.

16 Q   And what does your team generally do with the information

17 it learns after reviewing the tax and regulatory change?

18 A   So they're going to review it and determine what needs to

19 be tested, and then they're going to start creating their test

20 plan.

21 Q   What is a test plan?

22 A   So a test plan is a step-by-step guide or list of tasks

23 that the QA tester is going to walk through in that specific

24 client's environment, because each test plan is specific to a

25 client, and they're going to go through those steps or tasks

1 in each of the client's environments to validate the tax and

2 regulatory change that was developed is working properly or as

3 expected, kind of like a (inaudible).

4   Q   I'm sorry, can you say that end of your answer, again,

5 please.

6   A   Sure. It's kind of like an instruction manual for the QA

7 tester.

8   Q   And do members of your team create the test plan?

9   A   Yes.

10   Q   Are screenshots ever included in test plans?

11   A   There are screenshots in there of maybe an online page, a

12 section of it, and it will typically have a highlighted, say,

13 a box.

14   Say a year is changing online for a page, and it

15 will have that section to tell the tester, "Hey, go look at

16 this and make sure that the date is correct," and it will be

17 highlighted in the test plan.

18   Q   Do those screenshots or the test plans, more generally,

19 ever contain Oracle code?

20   A   No, and let me be clear on that. There is no Oracle code

21 in our test plans.

22   Q   Are test plans created for individual tests?

23   A   Yes.

24   Q   And are test plans also created for bundle tests?

25   A   Yes.

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1   Q   How does your team go about using a test plan?

2   A   So they go in for each specific client and then apply the

3   bundle, or an individual update in that client, and they are

4   going to go and follow each of the steps in that test plan

5   that ensure that the tax and regulatory change is working as

6   we would expect it to.

7   Q   And where are these test plans stored?

8   A   They're stored in Spira.

9   Q   What is Spira?

10   A   Spira is an online database that we have here at Rimini

11   Street that all of our test plans organize.

12   Q   And can you tell the Court how Spira is organized.

13   A   Sure. It's by individual update and (inaudible) --

14   Q   We lost you after "by individual update."

15   A   And by bundle.

16   Q   Okay. So Spira is organized by individual updates and by

17   bundles?

18   A   Yes.

19   Is this better? Let me put this up here.

20   Q   Okay. We'll try that.

21   Where does the quality assurance team actually run

22   the individual and bundle tests?

23   A   In each individual client's environment.

24   Q   In your work in quality assurance testing, are you

25   familiar with the term run to success?

1   A   Yes, I am.

2   Q   What does that term run to success mean?

3   A   So run to success -- it's kind of like a slang, I guess

4   you would say.

5   It's a term where we go in, and we'll tell a QA

6   tester to ensure that they run to success. But when you say

7   run to success, it's not just taking a program and putting it

8   in an environment and running it to success.

9   There's more things you do in that environment. You

10   do put the program in and you make sure it does run to

11   success, but we always do that.

12   But it also -- you have to go in and make sure that

13   the check is calculating correctly, for example, or the table

14   has been updated, or the page has been updated, whatever the

15   objects are touching.

16   It's kind of like an AirPod, like your AirPod

17   headset, you connect it to your phone, your iPhone, and when

18   you do, you push the button on the AirPod, it says connecting

19   on your phone, and then once it's connected, it's paired.

20   That's your run to success.

21   But it's not the only test you do because then you

22   have to take the AirPod, put it in your ear, tap it, and hear

23   the sound and make sure sound is coming out.

24   So a run to success is a term that some people

25   think, oh, they're just running it to success. Well, running

1   to success is a test for sure, but it's only a part of the

2   test. There's other things that have to happen as well.

3   Q   So earlier in this hearing we heard about something

4   called the Apply Update tool. Are you familiar with the Apply

5   Update tool?

6   A   I am.

7   Q   Well, what is the tool?

8   A   So the Apply Update tool is a tool that we created here

9   at Rimini Street. Myself and my team and one of our

10   developers worked to build a tool that applied the individual

11   update or the bundles to each specific client that I talked

12   about.

13   The Apply tool is on that client, and it only

14   applies to that client's bundle or individual update, and it

15   prints out reports for us to look at, for example, and has

16   things -- it's another form of a test by looking at those

17   reports.

18   It also has an apply log that gives us a lot

19   information. It shows us objects and if they were run to

20   success for example.

21   Q   Just to break that down a little bit, where does this

22   process with the Apply Update tool that you just described,

23   where does is it take place?

24   A   In each specific client's environment.

25   Q   And you mentioned that the Apply Update tool creates

1   reports or logs. What do those reports show?

2   A   So the Apply log, like I said, it will tell you what

3   client you're in, it will tell you if it was run for -- of

4   course you're in the environment looking at it, and it will

5   tell you who the tester was. It will tell you what objects

6   were applied, and if it was successful.

7   We also have a report in there, for example, that

8   shows that you have a DMS script in your package. So it

9   applies to a DMS script.

10   It will show you the before table and the after

11   table and highlight it. It's -- there's also a list of

12   objects, for example, but it's really something we created to

13   help us test. It's another tool for us to use.

14   Q   Does your team ever apply updates manually without using

15   the Apply Update tool?

16   A   Oh, yes. And they don't like to because they like all

17   the reports, but it can -- if it's not running -- and

18   sometimes there could be an environment issue or -- that's

19   keeping it from running, and so we have to go ahead.

20   We'll notify the client and say, "Hey, you have an

21   issue with your environment," but we go ahead and apply it

22   manually. But you don't have the logs and the reports, so

23   that's why the QA team likes that.

24   Q   Okay. So the preference is to try the Apply Update tool

25   but to go ahead and perform a manual test if the Apply Update

1   tool won't run for some reason; is that right?

2   A   Oh, yes, yes. We have to keep going.

3   Q   Is your team able to confirm whether quality assurance

4   testing has been done for a particular client update?

5   A   Yes. There's a couple of things that you can look at.

6   First, they're going to look at Spira, of course,

7   and then they'll look at the apply logs, and next they'll look

8   at what we have -- or what we call an environment spreadsheet.

9   Q   What is an environment spreadsheet?

10   A   An environment spreadsheet is something that our QA team

11   creates. It is a one-stop shop kind of a spreadsheet where we

12   can keep track of all of the clients that are in scope for

13   that individual update.

14   And it has the names of the client, their

15   three-digit alpha code. It has the developer, their status of

16   where they are, if they're in progress, completed, or not

17   started. It has the QA engineer on it, same status.

18   And then it has a comment section. So in that

19   comment section we'll note things if there's an environment

20   issue or if there's a problem with their delivery or package

21   or whatever it may be.

22   Q   Are these environment spreadsheets stored on Rimini

23   internal systems or third-party systems?

24   A   They're stored internally for us.

25   Q   And who has access to the environment spreadsheets?

1 A   Rimini Street QA and developers.

2 Q   Can anyone outside of Rimini Street access environment

3 spreadsheets?

4 A   No.

5 Q   So tell us a little bit more about how the quality

6 assurance team uses an environment spreadsheet in the

7 day-to-day course of its work.

8 A   Sure. As I talked about, it's kind of like a one-stop

9 shop. So it's -- my team is global. We have US engineers and

10 we have India engineers for example.

11   And instead of having hand-off meetings, they use

12 these spreadsheets to show where they are so I don't have two

13 employees picking up the same update to test, one in the US

14 and one in India.

15   They have to go in and put their name in it and then

16 give a status. If they started it, they put in progress, and

17 that allows us to keep organized.

18 Q   So does the environment spreadsheet keep track of the

19 testing status of particular updates across clients?

20 A   Yes. It will say whether it's not started, in progress,

21 or completed.

22 Q   Is there any testing that Rimini employees perform of

23 updates before the quality assurance testing we've been

24 discussing?

25 A   Yes. There's a unit test performed by the development

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1   team.

2   Q   What is unit testing?

3   A   So unit testing is when the developer goes in and they

4   have developed a change for a specific client. They go in and

5   either run that, say, COBOL -- oh, there you go -- run the

6   COBOL to success and validate the output is expected.

7   Q   And where does this unit testing take place?

8   A   In the client's development environment.

9   Q   So is your team involved at all in unit testing?

10 A   No. Sometimes we may help with data setup, but that's

11 typically a development function.

12 Q   Are you familiar with informal updates?

13 A   Yes, uh-huh.

14 Q   What is an informal update?

15 A   An informal update is -- a good example is when we have a

16 sales case that comes straight from a client. Say a client is

17 needing an update. We partner with them, and so sometimes

18 they have a window, for example, that they want a testing.

19 Maybe their system is going down or whatever it may be.

20   So they'll reach out to us and say, "Hey, is there

21 any possible way we can get this earlier? We have a delivery

22 date coming up and we need it quicker."

23   So they will -- we work with the client. It's

24 typically the Dev and QA team will work with them and say,

25 "Sure, we can do that, but please understand we're going to

1   give you an informal delivery, which is the objects, and then

2   we will have the QA team come back and give you the formal

3   delivery which will be your package and your documentation."

4   We also let them know that if there's an issue when

5   my team goes in and tests it, we're going to work with them

6   and make sure they understand that, "Hey, we found an issue,

7   we're going to give you a new COBOL," for example.

8   Q   So your quality assurance team would test the informal

9   update after it has been delivered to the client; is that

10 right?

11 A   Yes.

12 Q   But is there any testing that occurs before the informal

13 update is delivered to the client?

14 A   Yes.   That's the full unit testing with the development

15 team.

16 Q   Are informal updates common?

17 A   No, they're not.

18 Q   So if there's no Spira test plan, Apply Update log, or

19 environment spreadsheet for a particular update, what, if

20 anything, would that indicate to you about whether testing was

21 done for that update?

22 A   In that case, on smaller or it might be informal, I -- it

23 was tested.   We do not deliver something to a client without

24 it being tested, and a unit form is a form of a test.

25 Q   So if you're looking into a particular update and there's

1   no Spira test plan, Apply Log, or environment spreadsheet for

2   that update, would you conclude that testing did not occur?

3   A   No.   I can guarantee you it did occur. It's our

4   practice.

5   Q   Okay. Let's switch gears now and talk about a few of the

6   specific issues the Court has asked the parties to address in

7   this hearing.

8   A   Okay.

9   Q   Are you aware that one of those issues concerns an update

10   to 1099 forms for Easter Seals New Hampshire?

11   A   Yes.

12   Q   What was this update?

13   A   This update, I believe, was the 1099 -- I'm trying to

14   think which one this one was, the rsi940.

15   Q   This is the 1099 update.

16   A   This is the 1099. Yes, sorry.

17   Q   And was your team involved in quality assurance testing

18   the updates, the 1099 forms for Easter Seals?

19   A   Yes, they were.

20   Q   If we can take a look at Exhibit DTX-605.

21   And, Ms. Davenport, just so the record is clear, you

22   have a binder of exhibits in front of you for direct

23   examination, correct?

24   A   Yes. I didn't have it open, sorry.

25   Q   Okay. DTX-605, Exhibit 605 which was pre-admitted, what

1   is this?

2   A   This is a Spira test plan, and this is for FSCM,

3   financials, 100126, for Easter Seals. The three-digit alpha

4   code right there is EAS which is for Easter Seals.

5   It is for scheduled release RS-18F03. It was tested

6   by Kimberly Borst. It was completed and passed, as you can

7   see the green up at the top.

8   It was updated on 3-18 -- or tested on 3 -- I'm

9   sorry, 3/8 of 2018, and it was for the 1099 INT form.

10   Q   And can you just explain to the Court how you can tell

11   that this particular test for the 1099 INT form for Easter

12   Seals passed.

13   A   It says completed in the execution status history.

14   If you go down to -- I believe there's a second page

15   on this one. Can we go down to the next page, please?

16   The execution status off to the right you can see on

17   each one is passed.

18   Q   And so that indicates for you that the test was completed

19   and passed for Easter Seals for the 1099 INT form?

20   A   Yes, that section and the section at the top that showed

21   the green status, and the word complete.

22   Q   And can you just point the Court to how you can tell this

23   particular test was for the 1099 INT form?

24   A   One, you can look at the test cases right there, but if

25   you go back to the first page, there is -- and I'll say use a

1   description box.

2   Q   So we see second lot -- two lines up from the bottom in

3   the description box you see the 1099 INT form.

4   A   Yes.   Sorry, it's a little blurry on my side.

5   Q   Okay.   Let's take a look at Exhibit 606, which is also

6   pre-admitted.

7   A   Okay.

8   Q   And what is this document?

9   A   So this document is FSCM -- again, financials -- 100127

10   update for Easter Seals, again, the EAS. It was created by

11   Kimberly Borst. The status is completed, the execution status

12   is passed, and the date on it is 4/18 of 2018.

13   And if you go to the second page, you will see the

14   1099 MISC is what was tested, and the execution status is

15   passed.

16   Q   And so what does that indicate to you, Ms. Davenport?

17   A   That this was tested, and it completed, finished, and

18   everything passed.

19   Q   Okay. Let's take a look at the next Exhibit 601 which is

20   also pre-admitted. Ms. Davenport, what is this document?

21   A   This document is for financials, FSCM 100130 and 100131,

22   Easter Seals. It is for the 1099 Miscellaneous.

23   It is for scheduled release RSI-18F07, and the

24   creator was Kimberly Borst. It got passed and was completed

25   on 7/16 of 2018.

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1   It was for the 1099 Miscellaneous, nonemployee

2 compensation, or NEC form, 1099 Miscellaneous vendors. It was

3 tested, and all test cases passed successfully.

4 Q   Okay. And Mr. Jay is just pulling up the bottom of the

5 second page. Can you just explain to the Court again what

6 this portion of the document that was just highlighted in red

7 boxes shows?

8 A   Yes. It shows that the test cases for the 1099

9 Miscellaneous passed all of their tests for Easter Seals.

10 Q   That's what I was going to ask, what client was this for?

11 It was for Easter Seals?

12 A   Yes.

13 Q   Okay. So to sum up the three Spira records we just

14 viewed, do they reflect to you that Rimini's updates to the

15 1099 MISC and the 1099 INT forms were tested for Easter Seals?

16 A   Yes.

17 Q   And was that testing successful?

18 A   Yes.

19 Q   Let's now switch gears to talking about a different issue

20 in this case. Are you familiar with an update called

21 HCM200105 which is one of the updates which is the subject of

22 the Court's order?

23 A   Yes.

24 Q   So the Court's order focuses on whether HCM200105 was

25 developed and tested in the environments of two specific

1   clients, Home Shopping Network and Rockefeller Group

2   International.

3   Was your team involved in testing the updates for

4   these two clients?

5   A   Yes, my team was.

6   Q   Okay. Let's please take a look at Exhibit 1004 which was

7   pre-admitted, and the first page you can see some metadata

8   here.

9   A   Yes.

10   Q   Can you tell the document title from this metadata?

11   A   I can. It's for HCM200105, it's our environment

12   spreadsheet that we talked about, and it's for new clients, so

13   clients coming in.

14   Q   And so this is an environment spreadsheet for HCM200105;

15   is that right?

16   A   That is correct, for new clients.

17   Q   And so what -- if we can go to the first page -- or I

18   guess the second page of this exhibit, please. What does this

19   document show?

20   A   This document shows a list of all of our new clients. It

21   shows the client name, the three-digit alpha code that we

22   discussed earlier, the application release, the client tools,

23   the last Oracle update, which one of my team is testing it,

24   Kim Banner Scrum (phonetic). It tells who the developer is

25   that is developing it, as well as the status. It tells the

1   tester and it tells the status of the testing.

2   It also gives the comments as to what -- if there's

3   anything involved with any of these. As you can see, some of

4   them say NA or HSH. You can see they haven't received their

5   first deliverable, so we'll give it to them, just not right

6   now.

7   Q   Okay. And I know you mentioned this earlier, but can you

8   remind the Court, how does your team use an environment

9   spreadsheet like this one?

10 A   Sure. It's to keep us organized and make sure that we

11 get all of the development and testing completed for each and

12 every client on the list.

13 Q   And are the two clients I mentioned a bit ago, Home

14 Shopping Network and Rockefeller Group International, are they

15 reflected in this environment spreadsheet?

16 A   Yes. They're the last two clients on the list.

17 Q   So let's look specifically at the row for Home Shopping

18 Network. Under the column "Tester" is listed the word

19 Balamani. What is that?

20 A   Balamani is a tester on my team in India.

21 Q   And looking at the row, then, for Rockefeller Group

22 International, the last row, I see Savithri written under

23 tester. Who's that?

24 A   He's a tester in India as well.

25 Q   Can you tell from this document whether HCM200105 was

1   tested for Home Shopping Network?

2   MS. SMITH: Objection, your Honor --

3   THE WITNESS: Yes.

4   MS. SMITH: -- foundation.

5   THE COURT: We have a foundation objection.

6   MS. SAMPLIN: I can rephrase my question.

7   THE COURT: All right. Would you do that,

8   please.

9   MS. SAMPLIN: Sure.

10   BY MS. SAMPLIN:

11   Q   What, if anything, does this spreadsheet indicate to you

12   about testing of HCM200105 for Home Shopping Network?

13   MS. SMITH: Objection, your Honor, lack of

14   foundation as to the document.

15   THE COURT: Well, it's been pre-admitted, and I

16   think she's entitled to testify as to her understanding of it.

17   I'll allow the question.

18   BY MS. SAMPLIN:

19   Q   Would you like me to repeat the question, Ms. Davenport,

20   or do you have it in mind?

21   A   I have it in mind.

22   This spreadsheet shows that Balamani, on my team,

23   completed the testing of the Home Shopping Network.

24   Q   And same question for Rockefeller Group International,

25   what does this document indicate for you, if anything, about

1 whether HCM200105 was tested for Rockefeller Group

2 International?

3   A   It shows that Savi tested and competed her testing for

4 Rockefeller Group International for 200105.

5   Q   Let's take a look at Exhibit 1009 which was pre-admitted.

6   A   Okay.

7   Q   Are you familiar with this document?

8   A   Yes, this is my Apply log that we created.

9   Q   I know this is a bit difficult to read, so did you help

10 create a demonstrative of this document to direct the Court to

11 specific areas of the document?

12 A   Yes, I did. I believe they have it.

13   MS SAMPLIN: Yeah, let's pull up demonstrative

14 401, please.

15 BY MS. SAMPLIN:

16 Q   And is this the demonstrative that reflects the exhibit

17 we were just looking at?

18 A   Yes.

19 Q   Now, can you tell from this log file whether the Apply

20 Update tool was run?

21 A   Yes, I can. As I talked about earlier, the Apply log

22 is -- while it's real pretty, it does give you a lot of

23 information.

24   It tells you will what client -- for example, this

25 one was client HSP, which is Home Shopping Network.

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1   It tells me that Balamani, which is her last name.

2   So B is her first initial, and then K-a-l-l-a is her user

3   name, so it tells me that she ran it.

4   It tells me what network it was run. In other

5   words, it was run off the QA environment. That's the

6   HSDWPSW002, the run location.

7   It also tells you that it -- HCM200105 finished

8   successfully in the last highlighted section.

9   Q   Okay. Now, you mentioned Balamani. Is that the same

10   person we saw on the environment spreadsheet for this update

11   for HSP?

12   A   Yes.

13   Q   Now, if you could go to the next demonstrative, please,

14   402, and this is the bottom of Exhibit 1009. Can you explain

15   to the Court what this shows.

16   A   Sure. It says that it finished building update in the

17   client's environment, or finished running the Apply log for

18   update HCM200105, and it ran successfully.

19   Q   And so what, if anything, does this document tell you

20   about whether HCM200105 was tested for Home Shopping Network?

21   A   It was tested and it applied successfully.

22   Q   Let's take a look at Exhibit 1013 which was pre-admitted.

23   Now, what is this document?

24   A   So this is also an Apply log.

25   Q   And if we can take a look, please, at demonstratives that

1   were created to help pull out some information from this

2   document.   The first one is demonstrative 403.

3   And does this demonstrative reflect portions of

4   Exhibit 1013 that we were just looking at?

5   A   Yes, it does.

6   Q   So what does this portion of the Apply Update log

7   indicate to you, Ms. Davenport?

8   A   This tells me that we applied the update to Rockefeller,

9   which is the RKF.   It also shows that Savi was the user.   Her

10 last name is Gorli, so her first initial is S, last name,

11 G-o-r-l-i, and she was the one that ran it.

12   It was run on Dev HC92APP-RST, which is our QA

13 environment, for Rockefeller, and it finished successfully for

14 update HCM200105.

15   Q   And Savithri who you mentioned, is that the same tester

16 we saw on the environment spreadsheet for Rockefeller Group

17 International?

18   A   Yes.

19   Q   If we could take a look at next demonstrative, please,

20 404.   Now, this is the end of Exhibit 1013, which we

21 previously looked at.   What does this indicate to you,

22 Ms. Davenport?

23   A   It says that the update HCM200105 successfully applied to

24 Rockefeller.

25   Q   So, in total, this document, Exhibit 1013, what does it

872

1   tell you about whether HCM200105 was tested for Rockefeller

2   Group International?

3   A   It tells me it was successfully tested and applied.

4   Q   Let's switch gears to talk about a third issue in this

5   case which concerns development and testing for the update

6   HCM200049 for Matheson Trucking, Smead Manufacturing, and

7   Spherion, including the SQR file rsi940a.sqr.

8   Are you familiar with the update HCM200049?

9   A   I am.

10   Q   Was your team involved in testing the update?

11   A   Yes, they were.

12   Q   And did your testing -- your team's testing include the

13   SQR file, rsi940a.sqr?

14   A   It did.

15   MR. SMITH: Objection, your Honor, lacks

16   foundation.

17   THE COURT: Would you repeat the question,

18   please.

19   MS. SAMPLIN: Did your team's testing of

20   HCM200049 include testing of the SQR file, rsi940a.sqr?

21   THE COURT: I'll allow the question.

22   THE WITNESS: We did test it, yes.

23   BY MS. SAMPLIN:

24   Q   So let's walk through what happened for each of the

25   clients at issue.

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1   I'd like to show, first, Exhibit 210. Do you know

2   what this document is, Ms. Davenport?

3   A   Yes, I do. That is an e-mail that we received from

4   SalesForce for Matheson Trucking for case number 00162054.

5   I was put on it as an interested party, and so my

6   name is in the "to" field, and it's for a case where they say

7   that they're missing the 940 template.

8   Q   And what is SalesForce?

9   A   SalesForce is our tool that we work with our clients and

10   communicate with them. They go in and they will enter, for

11   example, maybe a question that they have on a tax and

12   regulatory update, or if they have a problem with their

13   deliverable, they're going to put a case in, and then we work

14   with them on that case.

15   Q   And did Rimini use SalesForce in the regular course of

16   its business in 2019?

17   A   Yes.

18   MS. SAMPLIN: I'd like to move Exhibit 210 into

19   evidence.

20   MS. SMITH: One minute, your Honor.

21   THE COURT: All right.

22   MR. SMITH: No objection.

23   THE COURT: It's admitted.

24   (Plaintiff's Document Exhibit 210
                        received in evidence.)
25

1   BY MS. SAMPLIN:

2   Q   Now, we've heard testimony in this case that SalesForce

3   tracks client cases. What is a client case?

4   A   So a client case is something that can be a question or a

5   problem with a deliverable, or a question about a deliverable,

6   that comes from the client, and they are putting in a client

7   case for us to respond to that client case.

8   Q   Do you know who added you to this case notification?

9   A   I don't. It doesn't tell me on this page. My guess

10   would be Teresa or Anil. They're the primary support

11   engineers.

12   Q   Did you read this communication when you received it?

13   A   Yes.

14   Q   What did you understand this communication to mean when

15   you received it?

16   A   That we were giving an informal update, HCM200049, to the

17   client so that they could pick it up, and we were giving them

18   a F940_2018.gif file, F9401_2018.gif file, and rsi940a.sqr.

19   Jim was also telling them that this is --

20   Q   I'm sorry. Ms. Davenport, can you start again from the

21   three items included at the beginning. The court reporter

22   couldn't hear you, and if you could slow down a little bit,

23   that would be great.

24   A   Okay. I'm so sorry.

25   Yes. This is an e-mail to the client telling them

1   that we are giving them an informal update for HCM200049, and

2   we're telling them it's available for them now to address

3   their client case, and they can pick it up, and where they can

4   pick it up.

5   It's a -- two GIF files, F940_2018.gif,

6   F9401_2018.gif, and rsi940a.sqr. Jim is also telling them

7   that this change will be formally delivered in the upcoming

8   update.

9   Q   Do you know why Rimini provided an informal delivery of

10   this update to Matheson Trucking?

11   A   Yes. If you go back to the date of this, it is -- this

12   940 is due on the 31st, and Matheson Trucking was missing it,

13   and so we were trying to get it to them as quick as we can

14   because they have short testing window.

15   So we gave it to them as an informal update, letting

16   them know, you know, we have not formally tested it, but we're

17   going to give it to you so that you can go ahead and get your

18   testing done.

19   If we find issues, we will come back to you and let

20   you know, and, if we need to deliver something, we will.

21   Q   Let's take a look at Exhibit 201, which is pre-admitted,

22   please. What is this document, Ms. Davenport?

23   A   That's our Apply log.

24   Q   Okay. And you helped create a demonstrative to pull out

25   particular pieces of this Apply log, right?

1   A   Yes.

2   Q   Okay. So if we can pull up that demonstrative, please,

3   which is 405. Can you tell us what this Apply log shows.

4   A   Sure. It tells me it's an Apply log for HCM200049.

5   It tells me it's for client Matheson Trucking, or

6   M-A-T.

7   It says it's for the QA environment where it says,

8   "Use QA as true." It also says that it finished completely.

9   So it applied HCM200049 successfully and tested it.

10   Q   Now, why was this update tested in QA on January 29th

11   after it was delivered on January 28th?

12   A   As we noted, or Jim stated in the client case, we were

13   giving them an informal update. So while that one is tested,

14   it's unit tested in the development environment, we are

15   testing it when we're delivering to everybody else as a formal

16   delivery, and the formal delivery, of course, has their

17   documentation, where the informal delivery is just the

18   objects.

19   Q   If the test had not run successfully at this point on

20   January 29th, would your team have informed Matheson Trucking

21   of that fact?

22   A   Oh, yes, uh-huh.

23   Q   Let's take a look, please, at Exhibit 205.

24   And what is this document, Ms. Davenport?

25   A   This is a client case for Matheson Trucking for client

877

1   case 00162054.

2   MS. SAMPLIN: I'd like to move this exhibit into

3   evidence, please.

4   MS. SMITH: It is my understanding that it was

5   admitted yesterday, so we have no objection.

6   MS. SAMPLIN: I apologize. Yes, it was admitted

7   yesterday. Thank you.

8   THE COURT: All right. It is admitted.

9   BY MS. SAMPLIN:

10   Q   Ms. Davenport, are you listed as a recipient of this

11   communication?

12   A   Yes. I was added to the client case as an interested

13   party, and so I'm in the "to" field.

14   Q   Did you read this communication when you received it?

15   A   Yes.

16   Q   Now, if we could look at the middle of the page, you see

17   there is a message from somebody named Mark. Do you see that?

18   A   Yes.

19   Q   Do you know who Mark is?

20   A   I do. He works for Matheson Trucking.

21   Q   And if we pull out, Mark says,

22   "I thought I already replied to your system

23   that the files were successfully retrieved and tested

24   and that this case could be closed. Sorry if it

25   didn't update you."

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1   What did you understand Mark to be communicating

2   in this message when you received it?

3   A   So Mark picked up the objects that Jim had put out there

4   in the informal delivery, applied it to their testing

5   environment that Matheson Trucking uses, and applied it and

6   tested it successfully.

7   He's saying we can close the case because everything

8   works as he expects it.

9   Q   Let's now talk about Smead Manufacturing. Can we please

10 take a look at Exhibit 405. And what is this document,

11 Ms. Davenport?

12 A   This is a SalesForce case for Smead Manufacturing Company

13 for client case number 00161188, and I was added on here as an

14 interested party as well.

15   MS. SAMPLIN: I would like to move Exhibit 405

16 into evidence, please.

17   MS. SMITH: No objection.

18   THE COURT: It's admitted.

19   (Plaintiff's Document Exhibit 405
                     received in evidence.)
20 BY MS. SAMPLIN:

21 Q   Did you read this document when you received it,

22 Ms. Davenport?

23 A   I did, yes.

24 Q   And if we could take a closer look at the text, thank

25 you. This text says,

1   "Hi, Maureen, an informal update, HCM200049,

2   is now available to address this case," and it goes

3   on to list different files.

4   What did you understand this communication to

5   mean when you received it?

6   A   So what Jim is saying in this one is an informal update

7   for HCM20049 is available for the client to pick up and test,

8   and he tells them where to pick it up on the DEF machine, and

9   it is for two GIF files, F940_2018.gif, F9401_2018.gif, and

10   then rsi940a.sqr.

11   He is also telling them that this is an informal

12   delivery, and a formal delivery will be coming at the proposed

13   date that we told them.

14   Q   And can you remind us the date of this document, please.

15   A   Yes. There you go. Thank you. January 25th of 2019.

16   Q   Okay. If we can please take a look at Exhibit 402 which

17   is pre-admitted. Ms. Davenport, is this another Apply Update

18   log?

19   A   Yes.

20   Q   And you helped create a demonstrative to pull out

21   particular portions of this Apply Update log, correct?

22   A   Yes.

23   Q   Okay. If we can take a look at that demonstrative,

24   please, 406.

25   Can you please explain to the Court what these

1   portions of the Apply Update log reflected in Exhibit 402

2   show.

3   A   So this is the Apply Update log for HCM200049. It's for

4   client Smead Manufacturing, or SME. It's being run in a QA

5   environment, you see where it says "use QA equals true."

6   It also states that HCM200049 was successfully

7   applied and tested.

8   Q   So does this document tell you whether this update was

9   tested for Smead Manufacturing?

10   A   Yes.

11   Q   And was that test successful?

12   A   Yes, it was.

13   Q   Can you explain to us why the update was delivered on

14   January 25th, 2019, but we see here in the Apply log that the

15   test was run on January 29th, 2019?

16   A   Yes. As the case stated, we gave them an informal

17   delivery, which is the objects, and told them that we would be

18   testing it formally at a later date.

19   This is the formal delivery, so the date is after

20   the informal delivery.

21   Q   Let's take a look, please, at Exhibit 406. What is this

22   document, Ms. Davenport?

23   A   This is a client case for Randstad Professionals, or

24   they're also called Spherion, for client case number 00160772.

25   I was added as an interested party to this, so my name is on

1 it in the "to." It was on January 25th of 2019, and it was

2 for the tax update F940 2018 delivery.

3   MS. SAMPLIN: I'd like to move Exhibit 406 into

4 evidence.

5   MS SMITH: No objection, your Honor.

6   THE COURT: It is admitted.

7   (Plaintiff's Document Exhibit 406
                          received in evidence.)

8 BY MS. SAMPLIN:

9   Q   Did you read this document when you received it,

10 Ms. Davenport?

11 A   Yes, I did.

12 Q   And if we could look at the text starting with,

13   "Hi, Juan, An informal update, HCM200049, is

14   now available to address this case."

15   And it goes on to list three different files.

16   Can you explain to the Court what you understood

17 this communication to mean when you received it.

18 A   Yes. We were telling Juan that for 200049 we were giving

19 them an informal update to address this client case, and

20 telling him that he can go pick it up on their Dev machine and

21 giving that location.

22   It's also the same two GIF files, F940_2018.gif and

23 F940_2018.gif, as well as rsi940a.sqr.

24 Q   And what --

25 A   Oh, sorry.

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1   Q   We're probably going to the same place, but I was going

2   to ask you what the next line of the document means where it

3   says,

4   "These changes will also be formally

5   delivered in a subsequent update."

6   A   Yes, that's correct.

7   So we're giving them their objects now, and then my

8   team will go back and be formally tested.

9   Q   Let's take a look, please, at pre-admitted Exhibit 403,

10   and, Ms. Davenport, is this another Apply Update log?

11   A   Yes, it is.

12   Q   And did you also help create a demonstrative to pull out

13   particular portions of this Apply Update log?

14   A   Yes.

15   Q   Okay. If we can take a look at demonstrative 407,

16   please.

17   Now, can you explain to the Court what these

18   portions of the Apply Update log indicate to you about client

19   Spherion.

20   A   Yes. The Apply Update HCM200049 was applied to Spherion,

21   which is the SPH SFN group. It was applied in the QA

22   environment, they "used QA is true."

23   This one actually is different from the other ones

24   because it did fail to build. So the DMS group in this one

25   looks like it was missing, and it failed to apply.

1   MS. SAMPLIN: And if you can just, Mr. Jay, pull

2   up the bottom a little bit because I think Ms. Davenport's

3   screen is blocking the text at the bottom.

4   BY MS. SAMPLIN:

5   Q   And are you looking at the bottom highlighted text,

6   Ms. Davenport, that says "failed to apply"?

7   A   Yes, that's correct. It failed to apply because it

8   couldn't find it in the folder.

9   Q   Let's take a look at the next exhibit, 404, which is

10   pre-admitted. And, again, is this an Apply Update log?

11   A   That is correct.

12   Q   Okay. And I'm going to show you a demonstrative

13   that you helped create for this Apply Update log, which is

14   demonstrative 408.

15   Now, and can you tell the Court, please, what this

16   Apply Update log indicates to you about client Spherion.

17   A   Yes. This Apply Update log, HCM200049, for Spherion

18   Group again, and it's for the QA environment. It failed to

19   build and it failed to apply HCM200049 for this same reason.

20   Q   Okay. So what do these documents indicate to you about

21   the testing up until this point, which would be January 25th,

22   2019, for Spherion, as to update HCM200049?

23   A   That the QA engineer, because it failed twice, they had

24   to go apply it manually.

25   Q   Is it common for the Apply tool to fail to run like this?

1   A   No, it's not common. It's either an environment issue or

2   an issue with our package.

3   Q   Now. You mentioned that the engineer would have -- would

4   have had to go in manually. How do you know that the engineer

5   would have gone in manually?

6   A   Well, we have to test it and, like we talked about

7   earlier, if they can't run this for some reason, they are

8   going to go in and manually apply it, manually test it.

9   And there's not a log like we talked about. We

10   don't have our nice log to tell us what happened, but they

11   have to apply it manually so that we can go ahead and get it

12   tested and then get it to the client.

13   Q   Let's take a look at the next exhibit, Exhibit 200, which

14   was pre-admitted. Now, what is this document, Ms. Davenport?

15   A   This is the Spira test plan for OREX 19P02 bundle for

16   Matheson Trucking.

17   It passed. It was for release RS-19P02, Savithri,

18   or Savi as we call her, is the one that tested it, and the

19   test set, as you can see, is RS-19P02_bundle_MAT, which is

20   Matheson Trucking, and you can see it was run on 4/4 of 2019.

21   Q   And can you just remind the Court, please, what a bundle

22   test is.

23   A   Sure. So a bundle test is a group of individual updates

24   that are packaged together, merged code, everything is

25   packaged together for the client to pick it up with their

1   documentation.

2   My team is responsible for applying the bundle to

3   our QA environment, running everything for applying, you know,

4   all the objects to the environment, and then we go in and

5   basically retest everything to make sure it's working

6   together, and then we also review the documentation.

7   Q   And how can you tell that this bundle passes for Matheson

8   Trucking?

9   A   It's the three-digit MAT alpha code up top.

10   Q   Was rsi940a.sqr part of this bundle test for Matheson

11   Trucking?

12   A   Yes.

13   Q   And can you just remind the Court again, please, why this

14   update would have been part of a bundle test.

15   A   Because even though we give a client individual updates,

16   they still get all the individual updates packaged together in

17   a bundle. It's up to the client as to which ones, or both, if

18   they can apply.

19   Typically, an individual update, we're trying to get

20   it out to them by a certain date due to a tax and regulatory

21   deadline, whereas a bundle is a set date that we give

22   everybody a bundle.

23   Q   You mentioned before that this was an informal update to

24   Matheson Trucking. Ultimately how many tests are done of an

25   informal update?

1   A   So an informal update -- well, actually, we test it three

2   times. It will be tested as a unit test by Dev, then it will

3   be tested as an individual update, and then it will be tested

4   as a bundle.

5   All of this goes on in the client's specific

6   environment, so in a sense that update for that piece of

7   development is tested three times.

8   Q   Let's take a look, please, at Exhibit 400 which is

9   pre-admitted. And what is this document that I'm showing you

10   now, Ms. Davenport?

11   A   This is a Spira test plan for RS-19P02 bundle for client

12   Smead, which Smead's three-digit alpha code is SME.

13   It was for scheduled release RS-19P02. Morarji, who

14   is one of my testers in India, tested it, and the status is

15   completed and it passed, as you can see the green right there.

16   It also was tested on 4/4 of 2019.

17   Q   Was rsi940a.sqr part of this bundle test for Smead?

18   A   Yes.

19   Q   So what, if anything, does this document indicate to you

20   about the bundle RSI-19P02, including rsi940a.sqr in terms of

21   whether it was tested for Smead?

22   A   It was tested as part of their bundle test.

23   MS. SAMPLIN: Thank you. No further questions

24   on direct examination.

25   THE COURT: All right. Cross-examination.

1   MS. SMITH: Your Honor, would this be an okay

2   time to take our morning break so that I can streamline the

3   cross-examination?

4   THE COURT: All right. No, that's acceptable.

5   And let's go ahead, and we'll take a morning

6   break, reconvene at between 10:30 and 10:35.

7   MS. SAMPLIN: Would the court like Ms. Davenport

8   to stay logged in?

9   THE COURT: What's the easiest, Katie?

10   THE CLERK: Yes.

11   THE COURT: Yes. Let's leave you logged in, but

12   you're welcome to take a break as well. Thank you.

13   THE WITNESS: Okay. Thank you.

14   (A recess was taken.)

15   THE COURT: Have a seat, please.

16   The record will show we are reconvened following

17   our morning break, and examination of Ms. Davenport continues.

18   MS. SMITH: The cross-examination, your Honor.

19   THE COURT: Oh, and we are at cross-examination,

20   excuse me.

21   CROSS-EXAMINATION

22   BY MS. SMITH:

23   Q   Ms. Davenport, you are currently employed as

24   Vice-President of Global Quality Assurance, correct?

25   A   Yes. My actual title is Global Vice-President of Quality

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1   Assurance.

2   Q   And you oversee Rimini's quality assurance efforts for

3   the SAP, JD Edwards, PeopleSoft, and EBS product lines,

4   correct?

5   A   Yes, that is correct.

6   Q   And you do not personally test PeopleSoft updates as part

7   of your current position, true?

8   A   I don't today, no.

9   Q   Before you were a vice-president, you were a Director,

10   Senior Director, and Senior Manager of quality assurance at

11   Rimini, right?

12   A   That is correct.

13   Q   And you did not test updates in any those roles -- and by

14   "those roles," I mean a director, senior director, and senior

15   manager of QA, correct?

16   A   As a manager and as a senior manager, during year-end

17   sometimes I would go in to help but not a ton, no.

18   Q   In those roles you did not do any testing yourself,

19   correct?

20   A   As I stated, as a manager and senior manager, during

21   year-end sometimes I did help out.

22   THE CLERK: May I interrupt?

23   (Discussion held off the record.)

24   THE COURT: All right. Go ahead, please.

25

1 BY MS. SMITH:

2   Q   The last position you held in which you actually

3 conducted testing was when you were a QA engineer, correct?

4   A   No. As I stated earlier, as a manager and senior manager

5 there were times that I helped out the team.

6   MS. SMITH: I'd like to read, your Honor, from

7 Ms. Davenport's deposition, page 23, lines 24 through page 24,

8 line 1.

9   THE COURT: Go ahead.

10   MS. SMITH: "QUESTION: When was the last

11   position that you held where you conducted tests?

12   "ANSWER: The QA engineer."

13   And I'd also, your Honor, like to read from her

14 deposition, page 23, lines 17 through 23.

15   THE COURT: Go ahead.

16   MS. SMITH: "QUESTION: No, do you not.

17   "Did you test when you were a director or a

18   senior director?

19   "ANSWER: No.

20   "When you were a senior manager did you

21   conduct tests?

22   "ANSWER: No."

23 BY MS. SMITH:

24   Q   And when you were a QA engineer at Rimini, that was back

25 in October of 2008, correct?

1   A   That is correct.

2   Q   It's been well over a decade since you tested any updates

3   for Rimini, right?

4   A   It has been a while, yes.

5   Q   Instead of testing updates or supervising the testing of

6   updates, your current work is with the budget, the staffing,

7   making sure that Rimini's policies and procedures are in

8   place, right?

9   A   That is correct.

10 Q   You have day-to-day managers that are in the trenches

11 supervising the day-to-day issues, right?

12 A   That is correct.

13 Q   And so you're not personally involved in reviewing

14 someone else's testing work, right?

15 A   No, I do not review it.

16 Q   I'm sorry. Would you repeat your answer?

17 A   I do not review their test plans right now.

18 Q   The Apply Update logs that you testified to earlier, you

19 don't review those contemporaneously, correct?

20 A   No.

21 Q   And so when was the first time that you saw an Apply

22 Update log? Was it in preparation for your testimony?

23 A   No. I helped create that tool, so I'm very familiar with

24 what that tool does. I was part of the requirements, part of

25 creating the reports, for example.

1   Q   When was last time you saw an actual log report from an

2   Apply Update?

3   A   I couldn't tell you exact time. There's times when they

4   have issues with the Apply log, that they'll call me and I'll

5   go look at them. I can't remember the last time. I would say

6   within a year or two. But, I was -- while I was at testing

7   (unintelligible).

8   Q   I'm sorry. Could you repeat your answer, please. I

9   think both myself and madam reporter couldn't hear it.

10   A   Okay. Is it not loud enough?

11   Q   I think it's loud enough, maybe you were getting a little

12   soft at the end.

13   A   Oh, okay. I apologize.

14   While I don't test, I do occasionally get called in

15   to help look at an Apply log. It's been a while, maybe a year

16   or so, since I looked at one.

17   But if there is an issue with it, my manager

18   sometimes will call me in and say, "Can you look at this Apply

19   log with me and see why it's failing," for example.

20   Q   So it's been approximately eight years since you looked

21   at an Apply Update log in order to assist somebody else on

22   your team, correct?

23   A   No, that's not true.

24   Like I was just saying, I would say it was last

25   year, or possibly the year before, that I got called in by one

1   of the managers and asked to look at an Apply log.

2   Q   And you were not personally involved in looking at the

3   Apply logs that you testified to this morning

4   contemporaneously as they were happening, true?

5   A   I was not the tester on those.

6   Q   And you didn't receive or review the Apply Update log

7   reports as they were occurring for the documents you testified

8   to this morning, right?

9   A   Again, I wasn't the tester on them, no.

10   Q   And you didn't have -- you didn't review those logs

11   before preparing for your testimony, correct?

12   A   No.

13   Q   No, meaning you did receive the logs?

14   A   I received logs as part of the evidence, yes, and I did

15   review them for the client case.

16   Q   Which client case?

17   A   For this Oracle lawsuit.

18   Q   Okay. So is it true that the first time you reviewed the

19   Apply Update logs that you testified about this morning were

20   in connection with this proceeding?

21   A   That is correct. But I am aware of this client case.

22   I was involved in them when they occurred back in

23   2019. So there's a good chance I did look at them and I just

24   don't remember.

25   Q   Ms. Davenport, you do not really consider yourself to be

1   technically knowledgeable about PeopleSoft, correct?

2   A   I'm not a developer, no.

3   Q   And so you're not really technically knowledgeable about

4   PeopleSoft, right?

5   A   Again, I'm not a developer, I'm a tester. Our duty is

6   functional knowledge.

7   Q   So is your answer yes?

8   A   I'm not a developer.

9   Q   So, yes, you do not consider yourself to be technically

10   knowledgeable about PeopleSoft, right?

11   A   It depends on what you're actually asking me. Are you

12   asking me if I can write code, or are you asking me if I can

13   read code?

14   MS. SMITH: I'd like to read from

15   Ms. Davenport's deposition, page 14, line 15 through 18.

16   MS. SAMPLIN: I don't think it's proper

17   impeachment, if that's the attempt, if she doesn't understand

18   the question.

19   MS. SMITH: Well, I've asked it several times,

20   your Honor.

21   THE COURT: Well, it's awkward with visual

22   testimony and -- which the Court approves and understands, and

23   we do that regularly, but it tends to create a problem when

24   we're dealing with issues relative to prior testimony and

25   prior activities.

1   I'll allow you to go ahead and proceed in this

2 manner. I haven't seen any violation of the practice.

3 BY MR. SMITH:

4   Q   "QUESTION: Do you consider yourself

5   technically knowledgeable regarding PeopleSoft?

6   "ANSWER: Not really. I'm not a developer."

7   And, in fact, you've never --

8   MS. SAMPLIN: That is her answer. I would renew

9 my objection that it's not proper impeachment, just for the

10 record.

11   THE COURT: The objection is noted, and I also

12 didn't see any impeachment there.

13   MS. SMITH: The impeachment was when she said

14 "not really," your Honor.

15   THE COURT: I understand.

16 BY MR. SMITH:

17   Q   You have never logged into a Windstream environment,

18 correct?

19   A   I have, actually, It's just been a while.

20   Q   I'm sorry, you dropped off and we couldn't hear you.

21   A   I have logged into a Windstream environment, but it's

22 been years ago.

23   MS. SMITH: I would like to read from

24 Ms. Davenport's deposition, page 176, lines 22, through 177,

25 line 4.

1   THE COURT: Go ahead.

2   MS. SMITH: "QUESTION: Are environments

3   stored on Windstream easier to access than

4   environments, typically speaking, that are not stored

5   on Windstream?

6   "ANSWER: I haven't gotten into those

7   environments in -- or I don't think I ever logged

8   into Windstream so I can't speak to that

9   particularly."

10   BY MS. SMITH:

11   Q   So to recap, you don't test anymore and haven't done so

12   in decade, true?

13   A   I have not tested in quite some time.

14   Q   Could you repeat your answer to the prior question,

15   please? Madam court reporter could not hear you.

16   A   I have not tested in --

17   Q   She still can't hear you.

18   A   I have my volume turned down.

19   MS. SMITH: Should I ask the question again?

20   THE WITNESS: I have not tested in some time.

21   BY MS. SMITH:

22   Q   And that's about a decade, true?

23   A   I can't remember the last time. It's been quite some

24   time.

25   Q   That would have been when you were a QA engineer in 2008,

1 right?

2   A   Yes, as far as full testing, or a manager.

3   Q   And your managers test or work with that piece of testing

4 more, correct?

5   A   That's correct.

6   Q   And you can't tell us the details, the day-to-day

7 details, of QA such as whether the PeopleSoft QA team still

8 uses QA groups, right?

9   A   To my knowledge, we don't use QA groups today.

10   MS. SMITH: I'd like to read from

11 Ms. Davenport's deposition, page 129, lines 18, through 130,

12 line 8.

13   MS. SAMPLIN: I would object that it's not

14 proper impeachment because her answer was about today. This

15 deposition took place more than a year ago.

16   THE COURT: I'll allow it with the understanding

17 that this is being presented as part of a question.

18   MS. SMITH: "QUESTION: I understand if you

19   might not be able to -- to tell me the day-to-day of

20   a particular fix, but I'm asking just as a matter of

21   practice. Does the PeopleSoft QA team still use QA

22   groups today, in general?

23   "ANSWER: Again, I -- I don't -- I am not

24   that level of -- or not at that level right now. I'm

25   a lot more -- work at a higher level. Sorry.

1   THE WITNESS: And I do have a point of

2   clarification --

3   MS. SMITH: There's no question pending.

4   There's no question pending.

5   MS. SAMPLIN: Well, I would object then, because

6   it wasn't part of a question, it was impeachment.

7   THE COURT: I'll allow her to clarify as a

8   result of the reading of that deposition portion, and you may

9   ask that question, Ms. Smith.

10   BY MR. SMITH:

11   Q   Is there something after me reading your deposition

12   testimony that you need to clarify?

13   A   Yes, there is. QA grouping is a development tool that

14   they used to use. We don't use it. We test no matter what.

15   A QA grouping is a QA grouping that you would have

16   to really talk to Jim about.

17   We have to test every single client in every single

18   client's environment no matter what, and, as I testified to

19   earlier, in some cases we test them twice.

20   Q   So you do or don't know the details of the QA groups?

21   A   I don't know a lot about it. It's really a Dev thing

22   that they use -- or used to use.

23   Q   And when you say Jim would know, are you referring to Jim

24   Benge?

25   A   That is correct, the developer.

1   Q   If we could turn to Exhibit 19 in your binder, please.

2   A   Okay.

3   Q   You received this e-mail from Jim Benge on November 13th,

4   2019, correct?

5   A   I'm sorry, 19? Mine is a --

6   Q   Oh, it's 18.

7   A   Oh, 18 is our test plan for me.

8   Q   DTX Exhibit 19?

9   A   There we go. You have tabs numbered, and so that's what

10   I was assuming you were referring to.

11   Q   I was, but there are Oracle numbers and Rimini numbers

12   that might overlap.

13   A   Okay.

14   Q   So the Oracle numbers are OREX, and Rimini's numbers are

15   DTX.

16   A   Okay. They don't correspond with their tabs here.

17   Okay. So this --

18   Q   So let me ask the question again because I got the date

19   wrong.

20   You received this e-mail from Jim Benge on

21   November 13th, 2018, regarding the PeopleSoft injunction

22   compliance notice, correct?

23   A   That is correct. I'm in the "to" or cc.

24   Q   And the only changes made to PeopleSoft services by

25   Rimini, according to this e-mail, are to stop using Code

1   Analyzer and DevReview tools, true?

2   A   That's correct.

3   Q   There were no changes referenced as it relates to

4   testing, correct?

5   A   That's correct.

6   Q   You testified on your direct that the Apply Update logs

7   show that testing was done in a customer's environment. Do

8   you recall that?

9   A   Yes.

10   Q   But the Apply Update tool only shows that the file is

11   placed in the custom's development or QA environment, and then

12   the testing is done remotely by QA engineers. Isn't that

13   true?

14   A   Yes. We go in and VPN into a client's specific

15   environment and test it.

16   Q   And so the Apply Update logs only show that the file was

17   updated to the QA environment, right?

18   A   And it shows which client and what was applied.

19   Q   And to get any more information about the actual QA

20   testing, you would have to look outside of that Apply Update

21   log, correct?

22   A   You would need to look in Spira, yes, or the environment

23   spreadsheet.

24   Q   You also testified this morning about unit testing. Do

25   you recall that?

1   A   Yes.

2   Q   And you don't personally know if unit testing took place

3   for any of the matters that you discussed this morning, is

4   that true?

5   A   I don't personally know, but it is our process.

6   Q   And you also didn't identify any documents in your

7   testimony this morning that show unit testing, correct?

8   A   No.   You would need to talk with a developer about that.

9   Q   And who would be the best person to talk to?   Would that

10   be Jim Benge?

11   A   Correct.

12   Q   If there were any records of unit testing, Rimini would

13   have provided them in this proceeding, correct?

14   MS. SAMPLIN: Objection, lacks foundation.

15   THE COURT: Sustained.

16   BY MS. SMITH:

17   Q   You have also testified that Rimini uses Spira, or Spira

18   as I've been calling it in my head, to record and track the

19   results of its QA testing processes for its PeopleSoft

20   software updates, correct?

21   A   As I stated this morning or earlier, it's a step-by-step

22   list of tests that they do, that they record the test cases,

23   pass or fail.

24   Q   So does it or does it not record and track the results of

25   the QA testing process?

1   A   It records the pass or fail of each of the tests.

2   Q   But it doesn't, for example, indicate what tests were

3 done individually and what the results are, is that true?

4   A   If you looked at some of the second pages that were

5 noted, it tells you what each case is, and you can drill in

6 and tell what is tested for that case.

7   Q   And that's not consistently kept in the Spira record,

8 right?

9   A   No.   That's a process, is to list the test cases and what

10 each test case is.

11   Q   Do you think there are some Spira records that don't have

12 that level of detail?

13   A   There could be maybe a minor change that's kind of

14 intuitive.

15   Q   If you could look at DTX-200, please. And these are

16 screenshots from a Spira record for Matheson Trucking,

17 correct?

18   A   Uh-huh.

19   Q   Yes, this is a bundle test claim, and you contend that

20 this Spira record shows that Rimini tested its bundle for

21 Matheson Trucking, and based on the other e-mails, that was

22 after the informal delivery, correct?

23   A   That is correct.

24   Q   And the execution date for this test is April 4th, 2019,

25 correct?

1   A   That is correct.

2   Q   And that's over two months after Rimini informally

3   delivered HCM200049 to Matheson Trucking in January of 2019.

4   Is that true?

5   A   Yes.

6   Q   Is it also true that HCM200049 is not mentioned in any of

7   the five pages of the Spira screenshots that are in DTX-200?

8   A   That is true. And, if you don't mind, I'll clarify.

9   The bundle test is a list of individual updates, and

10   we have documentation that goes to each client that has a list

11   of what that client is getting, the objects, the update IDs.

12   And so we don't specify in a bundle test by naming

13   each of the test cases. We look at the object list in the

14   documentation for every specific client.

15   Q   So, in that case, we wouldn't see a Spira entry for

16   HCM200049, is that true?

17   A   No, you would have a step to review all the objects.

18   Q   And the objects would be in individual Spira records?

19   A   They're the individual Spira tests as well as the list of

20   the test -- I mean, the list of the objects, sorry, by HCM

21   number in the client-specific documentation.

22   Q   And if you look at this Spira record, under Estimated

23   Duration, there's nothing under hours, and the actual duration

24   of this testing took zero hours. Do you see that?

25   A   Yes.

1   Q   And there are quite a lot of steps that need to be taken

2   that are identified in DTX-200 all the way up to -- from 1 to

3   21, correct?

4   A   Yes.

5   Q   If you could turn to DTX-400, please.

6   Do you recognize this as a Spira record for Smead

7   getting the rsi19p02 bundle, correct?

8   A   That is correct.

9   Q   And the execution date for this test in the Spira record

10   is April 4th, 2019, correct?

11   A   Yes.

12   Q   And, again, that's two months after Rimini informally

13   delivered that update to Matheson Trucking -- excuse me, to

14   Smead in January of 2019, correct?

15   A   That is correct. This is a bundle test so, again, an

16   informal delivery is giving them an object. An individual

17   update -- I mean, a bundle test is a group of individual

18   updates so it is going to (unintelligible).

19   Q   And there are no Spira records showing that Rimini tested

20   HCM200049 in Smead's client environment before the informal

21   testing -- before the informal delivery was delivered.

22   A   Can you state that again, please?

23   Q   Sure.

24   A   I'm not following your question.

25   Q   You did not identify a Spira record showing that Rimini

1   tested HCM200049 in Smead's client environment before

2   delivering the informal update in January 2019, correct?

3   A   No.   You have this sales case that stated that we gave

4   them the informal update.   Jim stated that.   We did test it as

5   an individual update for a formal individual update, and we

6   tested it again as a bundle.

7   Q   So my question, though, was with reference to informal

8   delivery.

9   A   Okay.

10   Q   So putting aside formal delivery, you did not identify a

11   Spira record showing that Rimini tested HCM200049 in Smead's

12   client environment before delivering the informal update in

13   January of 2019, true?

14   A   That's not our process.

15   Q   My question, though, is whether you identified any Spira

16   record showing that Rimini tested that update in Smead's

17   client environment before informally delivering the update to

18   Smead in January of 2019, correct?

19   A   QA does not test the informal update.   We test a formal

20   individual.   So we would not have tested the informal delivery

21   within unit testing.

22   Q   And you also didn't provide any documentation showing

23   that Rimini tested the update in Smead's client environment

24   before the informal delivery, right?

25   A   You would have to talk to Jim.

1   Q   And is that Jim Benge?

2   A   That is correct, sorry.

3   Q   But, again, the Spira records are QA records that are

4   part of your departmental responsibilities, right?

5   A   Yes, and we do individual tests and bundles.

6   Q   And in this instance --

7   A   Formal.

8   Q   -- you can't identify a Spira record showing that Rimini

9   tested the update in Smead's client environment before the

10 informal delivery, correct?

11 A   No. QA does not test an informal delivery, so we would

12 not have a Spira record.

13 Q   So it's true that you don't have a Spira record, right?

14 A   We have it for an individual and a bundle.

15 Q   I would like you to answer my question because I think

16 it's a simple -- I think it's a simple one.

17   You cannot identify a Spira record showing that

18 Rimini tested the update in Smead's environment before

19 delivering the informal update in January of 2019, correct?

20 A   QA will not have a Spira test plan for an informal

21 delivery.

22 Q   So your answer is yes, you did not identify a Spira

23 record.

24 A   That is correct.

25 Q   And we talked a little bit about this, and you testified

1   to it on your direct, but Rimini's quality assurance engineers

2   tests Rimini's updates in its customer's software environments

3   by remotely connecting to each environment to ensure that the

4   updates function correctly, right?

5   A   That is correct.

6   Q   And you agree that there are at least two requirements to

7   Rimini's QA processes, one, a QA engineer remotely connects to

8   a customer's environment, and, two, ensures that the updates

9   function correctly, right?

10   A   That's correct.

11   Q   You stated in your direct examination that Rimini unit

12   tested the HCM200049 update for Spherion, Smead, and Matheson

13   in each customer's environment before delivering the update to

14   those customers in January of 2019, correct?

15   A   Can you repeat that? I think I'm getting caught in your

16   terminology. I'm sorry. Because you called it a unit test.

17   Q   Yes. This question relates only to unit testing which

18   you testified about this morning.

19   You stated in your direct examination that Rimini

20   unit tested the HCM200049 update for Spherion, Smead, and

21   Matheson in each customer's environment before delivering the

22   update to those customers in January of 2019, correct?

23   A   That --

24   MS. SAMPLIN: Objection, that misstates the

25   direct testimony.

1   THE COURT: Well, she asked if that was correct.

2   MS. SMITH: I think the witness said yes.

3   THE WITNESS: I actually said "that."

4   MS. SMITH: Oh, excuse me.

5   THE WITNESS: That's okay.

6   Would you like me to go ahead?

7   MS. SMITH: I think there's an objection --

8   there's an objection pending for the judge, I think.

9   THE COURT: Rephrase the question and let's go

10   back to it.

11   MS. SMITH: Sure.

12   BY MS. SMITH:

13   Q   This morning you talked about unit testing being done by

14   the development engineers, correct?

15   A   That is correct.

16   Q   But in your testimony this morning about unit testing,

17   you did not identify who unit tested this HCM200049 update for

18   Matheson Trucking, right?

19   A   You have to talk with Jim Benge about (unintelligible)

20   the Dev group.

21   Q   Would the same be true for Spherion?

22   A   Yes.

23   Q   And would the same be true for Smead?

24   A   Yes.

25   Q   You also did not identify when the unit testing took

1   place, right?

2   A   No.   You would need to talk with Jim Benge.

3   Q   And, likewise, you didn't testify about the length of

4   time for the unit testing, correct?

5   A   No.   Again, you would need talk with Jim Benge.

6   Q   Okay.   Please take a look at OREX_81.

7   Are you with me?

8   A   Yes.

9   Q   You received this e-mail in OREX_81, correct?

10   A   Yes, ma'am.

11   Q   There's a comment section, it says,

12   "Hi, Maureen, an informal update, HCM200049,

13   is now available to address this case.   You can pick

14   up the changes from the following folder in your

15   development machine," and then it identifies the

16   development machine.

17   Do you see that?

18   A   Yes.

19   Q   And if we look at Exhibit 402, it is the Apply Update log

20   for the Smead matter; DTX-402, excuse me.

21   A   Okay.

22   Q   Do you know what computer language the Apply Update is

23   written in?

24   A   No, ma'am, I do not.

25   Q   And what the date in this Apply Update log that

```
 1   HCM200049 was applied -- or, excuse me, was delivered to

 2   Smead?

 3    A    This is when it was applied, and it was applied on

 4   January 29th of 2019.

 5    Q    I'm sorry, could you repeat that?

 6    A    Sure.  This report tells when it was applied to the

 7   environment, and it was applied on 1/29 of 2019.

 8    Q    And that's four days after the informal delivery was made

 9   to Smead, correct?

10    A    (Inaudible) formal.

11    Q    I think we missed the first part of your answer.

12         Could you state the whole answer again, I'm sorry.

13    A    That's okay.  I'm sorry it's going in and out.

14         The answer is yes, it was tested and applied after

15   the informal delivery on this log.

16    Q    Can you tell me from looking at this log how long the

17   Apply Update process took?

18    A    Yes.  If you go to the very top, it will tell you 11:45

19   is when it began, and then if you go to the very end, we

20   can -- it looks like it ran in about a second, it finished

21   about 11:45 and 44 seconds.

22    Q    Okay.  So switching gears to Matheson Trucking, DTX-201

23   was the Apply Update log that you identified for that client,

24   correct?

25    A    Yes.
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1   Q   And, in this case, can you tell me when the Apply Update

2   tool updated the HCM200049 file to Matheson Trucking?

3   A   HCM200049 was applied on January 29th, 2019, at 9:11 and

4   42 seconds.

5   Q   And that's approximately one day after the informal

6   delivery to Matheson Trucking, correct?

7   A   Yes. I don't have the other date in front of me, but I

8   believe so.

9   Q   Let's look at Exhibit DTX-205, please. And you testified

10   about this e-mail in your direct examination. Do you recall

11   that?

12   A   Yes.

13   Q   And if we go down to the bottom, there's a comment in the

14   e-mail from Mark Miszewski. Do you see that?

15   A   Yes.

16   Q   And he works for Matheson Trucking, correct?

17   A   That is correct.

18   Q   And his comment was, "The files were successfully

19   retrieved and tested," right?

20   A   That is correct.

21   Q   And it's possible that what he was referring to is that

22   Matheson, once they retrieved the update, tested it

23   successfully.

24   A   That's what he's stating, they successfully retrieved it

25   and tested the update.

1   Q   So that would indicate that Rimini didn't test it, right?

2   A   Actually, as I've stated before, it was an informal

3   delivery, and it was unit tested.

4   Q   Now, I'd like to talk about the Spherion case you also

5   testified to this morning. Do you recall that?

6   A   Yes.

7   Q   If you could turn to OREX_82, please. And you're copied

8   on this e-mail, correct?

9   A   Yes.

10   Q   And if you go down to the comment section, it has the

11   same information as was provided to Smead and Matheson

12   Trucking but indicating that an informal update, HCM200049, is

13   now available to address this case, correct?

14   A   Yes.

15   Q   And so Rimini provided this update to Spherion on

16   January 25th, 2019, right?

17   A   As an informal?

18   Q   Correct.

19   I'm sorry. I thought you were asking me a question.

20   That was your answer.

21   A   Oh, no. I was just making a statement. Yes, as an

22   informal.

23   Q   Okay. Thank you.

24   If you could turn to DTX-403 and DTX-404, those are

25   the two apply update logs relating to Spherion, correct?

1   A   Correct.

2   Q   And what's the date of this Apply Update log for DTX-403?

3   A   The first one is on January 23rd of 2019.

4   Q   And you testified on your direct that this particular log

5   indicated that HCM200049 failed to apply, right?

6   A   That is correct.

7   Q   And this means that the update failed to apply to the QA

8   environment, is that true?

9   A   That is correct. This log is showing that the package

10   failed to apply.

11   Q   In looking at the log file in DTX-403, do you see any

12   reference to rsi940a.sqr?

13   A   I don't think you've given me enough information on this

14   one. No, it looks like it stopped -- no, I don't on this one.

15   But you can see in the statement "files not found,"

16   there's something wrong with their package. So my guess would

17   be that it didn't even have it in there, it's missing the DMS

18   (unintelligible) SQR, because it looks like it has the -- oh,

19   there it is. I'm so sorry. It's in the middle.

20   So it has two GIF files.

21   Q   Correct.

22   A   Rsi940a.sqr -- oh, on the right, sorry. That one is

23   missing the SQR in that one.

24   And then if you look at the right, it has the SQR,

25   but it still doesn't have the DMS. See, here in the bottom it

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1   says file not found for HCM200049_U.dms.

2   Q   And that's with respect to a Code After issue, right?

3   A   That means that the file is missing from the package in

4   staging.

5   Q   If you could look at DTX-404, please.

6   And in this Apply Update log it has the same issue

7   in that the delivery was not successful, correct?

8   A   It's not that delivery wasn't successful, what this means

9   is that the Apply log was not successful, it failed to run.

10   So, in this situation, my QA engineer is going to go

11 back to Dev and say the files are missing from the package,

12 can you please put them in.

13   But since they have already run the Apply tool

14 twice, they are not going to run it a third time. They're

15 going to go in and manually apply it after the developer has

16 corrected the bundle.

17 Q   And what's failed to apply is that the update has failed

18 to apply to the QA environment, true?

19 A   True. But it doesn't mean it won't be tested.

20 Q   Right. It would be manually applied and then tested by a

21 QA engineer remoting in, right?

22 A   Correct.

23 Q   Could you tell from the logs in 403 and 404 who was the

24 QA engineer?

25 A   Yes, ma'am. If you'll go to the top of it, please, it

1   was one of my QA engineers -- I apologize, I can't say his

2   first name, but his user ID is E-l-e-f-l-a-b-h-a.

3   Q   And did you talk to this person about this Apply Update

4   log, or about both apply update logs failing?

5   A   A manager would not need to be involved in this. What

6   would happen is my QA engineer would be able to realize what

7   the problem is. It says right there "problem found."

8   So they, themselves, will go back and talk to the

9   developer and get it corrected. He cannot release this to go

10   to a client until he has a successful test. So -- which we

11   know he did in Spira record (unintelligible) I'm sure. I

12   don't know personally, but I'd have to go look.

13   But it's our practice that these -- this QA engineer

14   has to go talk with the developer, get the package corrected,

15   and have the package (unintelligible) all of our tests before

16   it can be delivered.

17   Q   Except for informal deliveries, right?

18   A   Again, we don't test informal deliveries. You'd have to

19   talk to Jim Benge.

20   Q   I'd like to draw your attention to DTX-1004, and I

21   believe you discussed this on your direct examination this

22   morning.

23   A   Uh-huh, yes.

24   Q   And, I'm sorry, tell me again what you call this type of

25   report?

1   A   Sure. It's an actual Excel spreadsheet. It's called an

2   environment spreadsheet.

3   Q   And why is it called an environment spreadsheet?

4   A   It's a list of environments that we are testing for a

5   particular case. In this situation, it's HCM200105, and this

6   particular one is a list of new clients that come onboard with

7   Rimini Street.

8   Q   The document itself doesn't indicate that it's related to

9   testing HCM200105, does it?

10 A   It actually gives you the status of testing.

11   While it doesn't have the test steps on here, it

12 does tell you that these files in green have been successfully

13 tested.

14 Q   But how do you know from this spreadsheet what fix or

15 update is being tested?

16 A   If you go back to the metadata, it tells you HCM2 -- I

17 believe it was 200105, so it's the name of the spreadsheet

18 down there, see HCM200105? And it tells you it's Rimini

19 clients.

20 Q   The environment spreadsheet doesn't indicate when the

21 testing would have occurred, does it?

22 A   That would be in Spira.

23   No, it does not have a date on it. It's telling

24 that you that it was tested and it's completed. Again, it's a

25 tool we use to stay organized.

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1   Q   It also doesn't indicate whether the test plan, if there

2 was one for an update, was followed, correct?

3   A   No. You would need to go to Spira to look at that. But

4 it does tell you it was followed because it's our -- it's our

5 process, our procedure is to complete the testing with Spira

6 test plan and then mark the spreadsheet complete. So it is

7 part of the process.

8   Q   I'm just a little confused because you testified that

9 Spira was the place to record and track the results of the QA

10 testing processes, and this is not a Spira record.

11   A   Spira, like I said this morning, is a list of tasks or

12 steps that you go through to test an environment. This tool

13 is more of a team tool to stay organized.

14   So once they have completed their testing in Spira,

15 and have completed all their steps, they're going to come

16 update this spreadsheet. They're also going to put notes on

17 it.

18   Q   And are those notes repeated in Spira?

19   A   They can be, yes. It depends on what the issue is.

20   Q   If you could turn to OREX_371, please.

21   And, in the meantime, I just have one follow-up

22 question on what we were talking about.

23   A   Sure.

24   Q   Would you expect to see a Spira record for each customer?

25   A   For an individual update and for a bundle you would see a

1   Spira test plan.

2   Q   Thank you.

3   You recognize OREX_371 as an e-mail for which you

4   received a copy, correct?

5   A   That is correct.

6   Q   And this e-mail --

7   MS. SMITH: I'm sorry. Your Honor, I would move

8   to admit OREX_371.

9   MS. SAMPLIN: Objection. This e-mail is about

10   five years prior to the injunction that's at issue in this

11   case so we would object on relevance grounds, also on

12   foundation, she's not on this document.

13   THE COURT: Ms. Smith?

14   MS. SMITH: Your Honor, she just said she

15   recognized the document and got a copy of it, and that was

16   established at her deposition. So I could read that

17   testimony, but I think it's unnecessary.

18   Additionally, the witness has testified that

19   there have been no changes in testing since the injunction was

20   issued and therefore a practice or an event in 2015 is

21   relevant.

22   THE COURT: All right. I'm not going to allow

23   it at this time. It would have to be -- the objection is

24   sustained.

25   MS. SMITH: I have no further questions, your

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1   Honor.

2   THE COURT: All right. Redirect examination?

3   REDIRECT EXAMINATION

4   BY MS. SAMPLIN:

5   Q   Hi, Ms. Davenport.

6   A   Hi.

7   Q   I just have a few questions for you.

8   A   Okay.

9   Q   Could you please pull up DTX-200 which you were shown on

10   cross-examination, and at the top right you were pointed to

11   the actual duration field. Do you see that?

12   A   I do. I'm glad you brought this up. I was going to

13   mention that earlier.

14   We did have an issue with our tool. As we all know,

15   you go through the test cases, there's quite a few. Even if

16   you walk through and click "pass" on every single one, it is

17   going to take a few seconds.

18   We did get this fixed, I do believe, but, there was

19   an issue with the time, or duration time there.

20   Q   So you mean the identified zero for actual duration would

21   not have been accurate, an accurate reflection of the time

22   taken for this test?

23   A   No. And honestly, I do not remember why it didn't work,

24   but I do know for a period of time it was showing zero, even

25   though we had times to put pass on every single one of the

1   test cases and also in some cases of comment.

2   So we knew there was time that was spent on this

3   test plan, but for some reason the total is still showing

4   zero.

5   Q   You were asked on your cross-examination about Spira

6   records for informal deliveries, and you testified that Spira

7   records do not exist for informal deliveries. Do you recall

8   that testimony?

9   A   Yes.

10   Q   Can you explain to the Court why Spira records do not

11   exist for informal deliveries?

12   A   My team doesn't test informal deliveries. That's done by

13   Jim's team in the Dev environment.

14   Once it gets to QA, and we have the package, that's

15   when the test plan is in the system for an individual update

16   or a bundle (unintelligible).

17   Q   And that's when you would see a record in Spira; is that

18   correct?

19   A   Correct.

20   Q   On your cross-examination you were also asked about your

21   day-to-day managers who are in the trenches overseeing

22   testing. Do you recall being asked about that?

23   A   Yes.

24   Q   Do those managers report to you?

25   A   They do.

1   Q   How often do you communicate with your managers,

2   approximately?

3   A   It depends on the week. It will be daily, sometimes

4   multiple times a day. Weekly we have a scheduled meet

5   one-on-one, but it doesn't mean I don't talk to them. They

6   e-mail me every single day.

7   Q   And does your QA team use the Apply Update tool?

8   A   We do.

9   Q   Based on your experience and Rimini's QA group, do you

10   know now to read the Apply Update logs?

11   A   I do. I helped create them.

12   Q   Does your QA team use environment spreadsheets?

13   A   We do, yes.

14   Q   And based on your experience in Rimini's QA group, do you

15   know how to read environment spreadsheets?

16   A   Yes.

17   Q   Does your QA team use and create Spira test plans?

18   A   Yes, we do.

19   Q   And based on your experience in Rimini's QA group, do you

20   know how to read Spira test plans?

21   A   Yes, I do.

22   MS. SAMPLIN: Thank you. No further questions.

23   MS. SMITH: I have no further questions, your

24   Honor.

25   THE COURT: There being no further questions of

1   you, Ms. Davenport, your testimony will be completed at this

2   time.

3   THE WITNESS: Okay. Thank you, Judge.

4   THE COURT: Thank you.

5   MR. MCCRACKEN: Your Honor, our next witness is

6   Professor Owen Astrachan.

7   THE COURT: All right.

8   OWEN ASTRACHAN
          called as a witness on behalf of the Defendant,
9   was sworn and testified as follows:

10   THE CLERK: Thank you.

11   Please state your name for the record.

12   THE WITNESS: My name is Owen Astrachan.

13   THE CLERK: Can you please spell your last name.

14   THE WITNESS: A-s-t-r-a-c-h-a-n.

15   THE CLERK: Thank you.

16   MR. McCRACKEN: Good morning, Professor.

17   THE WITNESS: Good morning, Mr. McCracken.

18   DIRECT EXAMINATION

19   BY MR. McCRACKEN:

20   Q   Could you please introduce yourself to the Court.

21   A   My name is Owen Astrachan. I live in Chapel Hill, North

22   Carolina. I have a family with two kids. And I am a

23   Professor at Duke University.

24   Q   What are you a professor of, sir?

25   A   I'm a professor of computer science.

1   Q   And why are you here today?

2   A   I'm here to offer my opinions as an expert in computer

3 science and software, and to respond to Ms. Frederiksen-Cross'

4 opinions.

5   Q   Did you prepare some demonstratives to help assist your

6 testimony today?

7   A   Yes, I did.

8   Q   Please tell us, if you would, about your educational

9 background.

10   A   I have a Bachelor of Arts degree in Mathematics that I

11 earned with some honors. Then I became a high school teacher,

12 which I was for seven years, and I have a Master of Arts in

13 teaching.

14   Then I went back to graduate school and got a Master

15 of Science and a Ph.D. in computer science. Those were all in

16 Duke; not my undergraduate degree, that was from someplace

17 else.

18   Q   Where is that from, sir?

19   A   That was from Dartmouth.

20   Q   How long have you been a computer science professor?

21   A   I've been a computer science professor for a little more

22 than 30 years at Duke.

23   Q   What classes do you teach?

24   A   Over those 30 years I've taught many different classes.

25 I've taught classes in programming languages, advanced

1   software design, mobile or phone software design, the first

2   course, computer science 101, data structures and algorithms,

3   technical and social foundations of the internet; many

4   courses.

5   Q   How many students attend your classes?

6   A   At Duke computer science is now a very popular course.

7   This semester, for example, I have 440 students in my course,

8   last fall I had 500. Many students take our courses.

9   Q   How many students have you taught computer science to

10   over the course of your career?

11   A   I've taught thousands and thousands of students. I did

12   the calculation two years ago, and I had taught approximately

13   a quarter of the graduating class at Duke.

14   Q   Have you won any awards?

15   A   I've won several awards. Some of those have to do with

16   funding the work I do. So I've won an IBM research award and

17   an NSF career award, which is the award that people try to get

18   to fund their research when they start as a professor. Those

19   were for introducing concepts related to software design in

20   industry into an academic enterprise.

21   I've won several teaching awards, some at Duke. One

22   was an international award for outstanding contributions to

23   computer science education.

24   Q   You said one of the awards was for software design in

25   industry. Can you tell us more about that.

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1   A   My NSF career award was an award for introducing

2   practices from industry into an academic enterprise, and the

3   IBM career award was a similar award for a different aspect of

4   software design in industry.

5   Q   So are you knowledgeable about software design practices

6   in the industry?

7   A   Yes, I am.

8   Q   And that was the subject of your award?

9   A   Yes, that's correct.

10   Q   Have you authored any textbooks?

11   A   I did. I authored a textbook called *A Computer Science*

12   *Tapestry* that had two editions.

13   Q   And what is that book about?

14   A   That was called *A Computer Science Tapestry: Exploring*

15   *Computer Science with C++*, so it was a textbook. The language

16   was C++.

17   Q   And has that textbook been used in any courses?

18   A   When textbooks were in vogue back the late '90s and early

19   2000s, that was a best selling textbook. It was used

20   extensively.

21   Q   Was it used by other professors?

22   A   Yes, it was used in 30, 40, 50 different colleges.

23   Q   Do you have any experience, yourself, developing

24   software?

25   A   I do have experience developing software.

1   Q   Can you describe that experience for us, please.

2   A   When I first started as a graduate student, another

3   student and I had an informal software company where we

4   developed software for neuroscience professors in the medical

5   center for them to perform experiments with. That included

6   writing Windows code and logging the events that they saw

7   their subjects happen to.

8   I also wrote what might have been one of the first

9   basketball bracket picking programs when we first got delivery

10   of a Sun work station to allow all the employees and students

11   at Duke to pick their basketball brackets.

12   Q   Like a March Madness type bracket?

13   A   Absolutely. Because at that point computers had not had

14   Windows environments, and, yes, you were allowed to pick your

15   March bracket, and we tracked who was winning.

16   Q   What year was that?

17   A   That was in the late '80s, early '90s.

18   Q   Do you have a specialty within the field of computer

19   science?

20   A   In many ways I'm a generalist in computer science, but I

21   work to incorporate both best practices from a pedagogical

22   standpoint and from an industry standpoint, when those are

23   relevant, into our courses so that our students can succeed.

24   Q   Do you have any expertise in software industry and best

25   practices?

1   A   Yes. I mentioned that I'd won two awards that funded my

2   research and understanding into industry best practices.

3   Q   What are some of the things you teach your students about

4   best practices for development?

5   A   These days, one of the practices we talk about is that

6   you're likely going to be working on a team, and when you're

7   working on a team, you have to ensure that your software is

8   written to conform to standard guidelines and principles and

9   conventions, since others may be using your work, and that

10   adhering to these conventions is an important part of your

11   software. Of course, you want it to be correct, too, but you

12   want it to be well written as well.

13   Q   When you say well written and adhering to conventions,

14   what do you mean?

15   A   There are conventions about the names that developers

16   would use in their programs, both for variables and what we

17   call functions, or the names of the programs themselves, that

18   those names should be indicative of what they do, not a

19   favorite color or character in a movie, for example, but,

20   rather, germane and relevant to the purpose of the variables,

21   functions, and programs themselves.

22   Q   Aside from the textbook we talked about, do you have any

23   publications in the computer science field?

24   A   Yes. I've published extensively, especially in the area

25   of computer science education. I have more than 20

1   publications in that venue, hundreds of presentations and

2   workshops that I've that conducted, and that's ongoing.

3   Q   Do you teach any online courses?

4   A   I'm part of a team of four at Duke that has delivered an

5   online course for Coursera on Java programming.

6   Q   How many students have you taught through your online

7   Coursera course?

8   A   Although I don't know all of the students, over 500,000

9   students have taken our course, so it's rather extensive and

10   worldwide.

11   Q   What's that course about?

12   A   That's a course on introductory programming using

13   JavaScript, HTML, and then Java which are different languages

14   that people use to program computers or create Web pages.

15   Q   How many computer languages do you know?

16   A   I know ten or more languages. I program these days

17   extensively in C, C++, Java and Python, but over time I've

18   programmed in many more languages.

19   Q   Have you been qualified as an expert before in

20   litigation?

21   A   Yes, I have.

22   Q   In what fields have you been qualified as an expert?

23   A   In fields related to software, patent and copyright

24   related to software.

25   Q   Are you an expert in reading code?

1   A   I would say I am, yes.

2   Q   Have you testified before as an expert witness in federal

3   court?

4   A   Yes, I have.

5   Q   I want to talk to you about your involvement in this

6   litigation.

7   When did you first start working on this litigation

8   between Oracle and Rimini?

9   A   I was first retained in late 2017.

10   Q   And do you recall as a part of which of the cases between

11   these parties were you retained at that time?

12   A   That was part of Rimini II. I had no involvement in what

13   I understand is called Rimini I.

14   Q   And by that you mean the earlier trial in 2015?

15   A   That's correct.

16   Q   So this hearing concerns postinjunction proceedings in

17   what is still called Rimini I although much later.

18   What was your assignment as it concerns this

19   postinjunction proceeding?

20   A   My assignment was to respond to Ms. Frederiksen-Cross'

21   reports that she had written, and to write about what the

22   injunction had to say.

23   Q   Now, what issues are you here to talk about today?

24   A   I know I have a demonstrative about this -- and I can't

25   see that here.

1   Q   Let's see if we can get it up on the screen.

2   We can all see it, Professor, but you haven't seen

3   any of the slides so far, huh?

4   A   Well, I knew you could, but -- I was reasonably confident

5   I remembered what was in the early slides.

6   Q   Do you see it now?

7   A   Not yet. Now I do.

8   THE CLERK: You do now?

9   THE WITNESS: Yes.

10 BY MR. McCRACKEN:

11 Q   All right. So, Professor, can you tell us -- mine went

12 away.

13 A   Mine did, too.

14 Q   Can you tell us what topics you're going to discuss

15 today?

16 A   I grouped them into four areas. Issue one is isolated

17 PeopleSoft files sent to Rimini by clients.

18   Issue 5 is the rspcmpay COBOL file.

19 Q   That's the one with the -- where Ms. Frederiksen-Cross

20 alleged there was matching code between a Rimini file and an

21 Oracle file?

22 A   Yes. That rscpmpay incorporated protected expression

23 from an Oracle file PSPTARRY.

24 Q   That was her allegation.

25 A   That's correct.

1   Q   Okay. Please continue.

2   A   Issue 9 is the JDE technical specification issue where

3   Ms. Frederiksen-Cross contends that JDE code has been

4   incorporated into a Rimini technical document.

5   And then the other issues are related to derivative

6   works and cross-use, and those are issues 3, 4, 6, and 10.

7   Three is the W2 update for Johnson Controls, 4 is

8   the rsi940a.sqr update to Smead and Spherion, Issue 6 is 1099

9   update for Easter Seals, and then Issue 10 is the risqtrtx.sqr

10   update for Rockefeller Group and Home Shopping Network.

11   Q   And I see that you're opining on Issue 9 which relates to

12   a JD Edwards technical specification.

13   Are you offering any opinions today on Issue 7,

14   which is the definition of JD Edwards software source code in

15   the injunction?

16   A   I am not. I understand that is a legal matter. I'm not

17   offering any opinions on that.

18   Q   What materials did you review as part of your

19   investigation in this postinjunction proceeding?

20   A   I reviewed all the materials in Ms. Frederiksen-Cross'

21   report. I reviewed the source code for Rimini's AFW tools,

22   logs and records from the AFW database, Dev instructions and

23   technical specifications written by Rimini personnel, e-mails

24   and other documents concerning development, the Jira database

25   and the Spira database that are about development and quality

1   assurance.

2   I reviewed deposition testimony. I reviewed the

3   reports that I had previously written, and I reviewed both

4   Rimini and Oracle code or software files.

5   Q   All right. Let's talk about the first issue which you

6   have as the isolated PeopleSoft files sent by clients.

7   Ms. Frederiksen-Cross testified at length the first

8   day of trial about files that were sent to Rimini by clients.

9   What is the takeaway we should gather from that testimony?

10 A   In her testimony I counted that there were four

11 SalesForce cases consisting of eight attached files. There

12 were three e-mails sent by clients to Rimini that consists of

13 11 files.

14   So there were a total of 19 PeopleSoft files sent by

15 clients as either attachments to e-mail or attachment to a

16 SalesForce ticket.

17 Q   Were there only seven total instances that she testified

18 about?

19 A   That's correct.

20 Q   Do you consider those 19 files sent to Rimini by clients

21 to be isolated?

22 A   Yes. I call them isolated because they're not part of

23 any environment. Any environment from which they came were

24 the client's environment.

25   Rimini has no environments so these PeopleSoft files

1   are isolated. They can't be executed because Rimini has no

2   PeopleSoft environments. They can't be run. They can't be

3   used because they are isolated from the environments from

4   which they came.

5   Q   What did Ms. Frederiksen-Cross claim that Rimini did with

6   these files?

7   A   She claimed that they were open when the e-mail or the

8   ticket was open.

9   Q   And she kept talking about copies. What did you take

10   away from that?

11   A   Well, I understand that when you read an e-mail, the

12   e-mail is in memory, and that's a copy, but that's what I

13   understood she was saying.

14   Q   All right. In her testimony, Ms. Frederiksen-Cross'

15   testimony about these files on Rimini systems sent by clients,

16   she showed a series of side-by-side comparisons. Do you

17   remember that?

18   A   Yes, I do.

19   Q   And the side-by-side comparisons, at least as I recall,

20   showed a great degree of matching between the files. Is that

21   your recollection?

22   A   That is my recollection. I didn't real understand the

23   purpose of that since it's acknowledged that these are

24   PeopleSoft files.

25   So, of course, they are PeopleSoft files, meaning

1   that when you compare one that the client sent, for example,

2   to one that Oracle has, we would expect them to be 100 percent

3   matching, or perhaps very close if one of them had been

4   modified in the client environment.

5   So I didn't really understand the purpose of saying

6   that an Oracle file is an Oracle file because, as I understand

7   it, it has been conceded that, yes, clients sent these files

8   to Rimini.

9   Q   And you would expect if you compare an Oracle file to

10   itself it would be a very close match?

11   A   I would expect it to be a 100 percent match in most

12   cases, yes.

13   MR. McCRACKEN: Your Honor, I'm going to move on

14   to a long module, should we break now?

15   THE COURT: Let's do break, that way we will be

16   able to reconvene at a little earlier in time. We'll take our

17   noon recess and reconvene at 1:15.

18   MR. McCRACKEN: Thank you, your Honor.

19   (The noon recess was taken.)

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1   RENO, NEVADA, FRIDAY, SEPTEMBER 24, 2021, 1:15 P.M.

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4   THE COURT: Have a seat, please.

5   The record will show we are reconvened following

6 the noon recess.

7   And, Mr. McCracken, you're welcome to go forward

8 with your examination.

9   MR. MCCRACKEN: Thank you, your Honor.

10 BY MR. MCRACKEN

11   Q   Welcome back, Professor.

12   A   Thank you.

13   Q   And we're going to talk some code next, I think.

14   Can you tell us what this Issue 5 is. It's called

15 rspcmpay.cbl.

16   A   Issue 5 is about that file that you named rspcmpay.cbl.

17 That is a Rimini file, and Ms. Frederiksen-Cross contends that

18 it contains protected expression of an Oracle file

19 psptarry.cbl.

20   Q   And you call it pstptarry, is it p-s-p-t-a-r-r-y dot

21 c-b-l?

22   A   Yes. I'm not sure if it's pronounced psp tarry or psp t

23 array.

24   Q   Let's go with psptarry for the hearing just so I'm on the

25 page with you.

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1   Do you agree with Ms. Frederiksen-Cross that

2   Rimini's files substantially incorporates protected material

3   from Oracle's file?

4   A   No, I disagree.

5   MR. McCRACKEN: Let's pull up DTX-501, please.

6   And you can turn to it in you binder if you

7   would like, Professor.

8   BY MR. McCRACKEN:

9   Q   Professor, is this the Rimini file, rspcmpay that you

10 analyzed?

11   A   Yes, this is it.

12   MR. McCRACKEN: Let's get DTX-502, please.

13 BY MR. McCRACKEN:

14   Q   And, Professor, is DTX-502 the psptarry file that you

15 analyzed?

16   A   Yes.

17   Q   This is the Oracle file?

18   A   That is correct.

19   Q   Now, Ms. Frederiksen-Cross testified about these files

20 and she used Oracle exhibit numbers. Do you recall that?

21   A   Yes, I do.

22   Q   So these exhibits are actually on both parties' lists.

23 They are identical files with the same bates numbers. Is that

24 your understanding?

25   A   That is my understanding.

1   MR. McCRACKEN: Let's pull up, Mr. Jay, if you

2   can, let's pull up DTX-501 and Oracle Exhibit 237,

3   side-by-side if we could, please.

4   BY MR. McCRACKEN:

5   Q   All right. And, Professor, it looks like we're looking

6   at rspcmpay on both of these documents. Is that your

7   understanding?

8   A   Yes, that's correct.

9   Q   Now, these two documents are the same document with the

10 same bates, but they look different to me.

11   A   Yes, they do.

12   Q   And why is that?

13   A   The Rimini document, DTX-0501, is printed in what we

14 called a fixed width font where every character takes up the

15 same amount of space on a line. That's the view that a

16 programmer would see.

17   And the Oracle exhibit on the right, which is the

18 same file, and that's OREX_0237, that's printed with a

19 non-fixed width font. As a result, it looks different, for

20 example, things aren't lined up the same way as we see in the

21 Rimini exhibit.

22   MR. McCRACKEN: Let's look at that. Hold on,

23 Professor. So can we blow up the bottom of DTX-501.

24 BY MR. McCRACKEN:

25   Q   Yes, so continue, Professor. What about this is lined up

1   correctly?

2   A   So we see many columns lined up. For example, COBOL is a

3   column-oriented language. Some statements must begin in

4   specific columns, and we see here that the pic in the middle

5   of the screen, all the Ps and the rest of it, pic, pic, pic,

6   going from the top to bottom, those are lined up.

7   We see the value that comes after that on the

8   right-hand side, all the Vs in value line up, and that's the

9   view that a programmer would see with this regular occurrence

10 because it's a fixed-width font.

11   Q   And when a programmer is looking at this file on his or

12 her computer, they're not looking at a .pdf, right?

13   A   That's correct. What we see here in the exhibits is the

14 .pdf, but a programmer would load it as a text file with this

15 cbl suffix, and they would see it in a text editor or a

16 programming environment that typically always uses a

17 fixed-width font.

18   Q   And so when they see it, it will look more like DTX-501?

19   A   Yes, that's correct. It will look like the Rimini

20 exhibit.

21   MR. McCRACKEN: Okay. Can we get away from this

22 zoom?

23 BY MR. McCRACKEN:

24   Q   So, Professor, how does that visual issue with the

25 fixed-width font affect Ms. Frederiksen-Cross' analysis?

1   A   Well, I'll get into the bulk of the analysis but, among

2   other things, looking at a non fixed-width font might lead you

3   to view these asterisks that appear in the section titled

4   Rimini Street Modification Log -- I believe

5   Ms. Frederiksen-Cross used the phrase "orphan asterisks" as

6   though they were hanging out there on the line by themselves,

7   and in fact these aren't orphaned at all.

8   Every one of the asterisks occurs in the last column

9   of a line as we can see in the Rimini exhibit. The asterisks

10   are lined up exactly in that last column. That's the view

11   that a programmer would see.

12   MR. McCRACKEN: And, Mr. Jay, can you just pull

13   up -- show the Oracle Exhibit 237, let's look at the top half.

14   BY MR. McCRACKEN:

15   Q   And, Professor, are those the orphan asterisks you're

16   talking about?

17   A   Yes. In this view they appear almost to occur in some

18   random location. In fact, each of those asterisks on the

19   right is in the last column, and we see that in the Rimini

20   exhibit.

21   Q   So, in other words, they're not really there on this

22   exhibit. That's not what the real file looks like.

23   A   Well, the asterisks are there, but they don't occur in

24   these random, orphan locations. They occur with great

25   regularity in the last column.

1   Q   All right. Professor, let's talk about what these files

2   do, what the Rimini file and what the Oracle do.

3   What is the purpose of the Rimini file?

4   MR. McCRACKEN: And, actually, let's just pull

5   it up, just 501, please.

6   THE WITNESS: Well, the Rimini file has a

7   program description at the top that describes what it does,

8   and we can see that it accumulates YTD -- that's year-to-date,

9   YTD is a standard abbreviation for year-to-date -- grosses for

10   common paymasters.

11   And I understand that a common paymaster is when

12   a business might have two organizations within the business,

13   both organizations pay an employee, and you have to reconcile

14   withholdings.

15   So a common paymaster, as I understand it, is

16   making sure that your taxes are working properly, and as it

17   says, this augments TARRY -- that's the Oracle file,

18   PSPTARRY -- by breaking out this common pay in more detail.

19   And then it supplies detail for some states that

20   aren't included in this CMPTT, and it stores this data in

21   what's call RSLNK. That is a Rimini-identified part of the

22   program, we wouldn't see that in the Oracle file.

23   And then part two, it loads confirmed check data

24   using a previous checks area of this same Rimini storage area,

25   RSLNK. So it's doing two things, common paymasters and

1   previous checks.

2   BY MR. McCRACKEN:

3   Q   Does the Oracle file do anything related to the previous

4   checks?

5   A   No.   The Oracle file does not process previous checks,

6   and because the Rimini file is doing this common paymaster, it

7   breaks out data in more detail, in finer detail.

8   Q   Are these files similar lengths?

9   A   No.   The Oracle file has many, many, many more lines than

10   the Rimini file.

11   Q   And why is that, Professor?

12   A   Because these two files do very different things.   We've

13   just discussed what the Rimini file does, and the Oracle file

14   does far more, and I believe there's a demonstrative that

15   explains some of these differences.

16   MR. McCRACKEN: Let's take this exhibit down and

17   try to go to -- it might be slide 5.

18   BY MR. McCRACKEN:

19   Q   Is this the demonstrative you're referring to, Professor?

20   A   Yes, this is it.

21   Q   This is DDX-510.

22   A   And what we see is that, although both programs access

23   the same database because it's a database on the client's

24   system storing payment data, that the Oracle file loads

25   significantly more data.

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1   And we see that, if we look at the program, it's

2   much lengthier because it loads far more material from the

3   database.

4   The Rimini file loads significantly less data, thus

5   it's somewhat shorter, or significantly shorter, and it loads

6   different data, as I mentioned, data from previous checks,

7   and, because of the common paymaster, it has to take that

8   year-to-date data and make it finer grained.

9   And I mentioned that the Rimini file uses this RSLNK

10   area of memory. That's not present in the Oracle file which

11   uses its own area of memory.

12   Q   Are the files similar only in the sense that they both

13   are loading data from a particular database?

14   A   They are similar in loading data from the database, and

15   they're similar in loading Y to date -- year-to-date data.

16   But that's the extent of their similarities.

17   Q   And is the fact that they are both loading data and

18   year-to-date data from the same place going to affect whether

19   the code might be the same in particular places?

20   A   In some places we might expect the code to be the same,

21   but, as I think we'll be exploring, that doesn't mean that

22   it's incorporated in protected expression.

23   Q   So, Professor, did you analyze these two files to

24   determine whether they are substantially similar?

25   A   Yes, I did.

1   Q   And what is the proper way to analyze these two files for

2   substantial similarity?

3   A   As I understand it, to determine if there's substantial

4   similarity in a copyright case, we would conduct analytic

5   dissection, a process that I didn't conduct, and we'd see are

6   the matching portions of the two programs being compared, do

7   they consist of protected expression.

8   That's the first step, conducting analytic

9   dissection. And if we found that there was no protected

10 matching expression, we'd see there was no violation, there

11 was no copyright violation.

12   If there were some matching protections, we would

13 look to see do they constitute a substantial portion of the

14 protected work.

15   That's my understanding of the proper way to conduct

16 a copyright case for protected expression.

17 Q   Are those the two steps that you followed?

18 A   Yes, they are.

19 Q   All right. Let's talk about the analytic dissection

20 step. How do you determine whether a line of code is

21 protectible?

22 A   Well, there are several steps that we need to do to

23 determine if it's protected expression.

24   Software, by its nature, is extensive, and an entire

25 software work such as PeopleSoft would properly be

1   copyrighted.

2   So that doesn't mean that each individual line is

3   itself created. So we have to look at those lines to see

4   whether they are in fact protected expression, and I've listed

5   here some of the unprotected elements that should be filtered

6   out.

7   For example --

8   Q   Yes, please continue. Can you tell us what unprotected

9   elements you filtered out.

10 A   Some lines are specific to the programming language. In

11 this case that would be COBOL, in other languages it might be

12 different.

13   But the language itself dictates you must use

14 certain terms that are required by the language. Those would

15 be filtered out.

16 Q   And so if the language requires you to use certain terms,

17 are those lines of code creative?

18 A   No, they're not creative because they're required by the

19 language. You can't do it any other way.

20 Q   All right. Please continue. What other elements did you

21 filter out?

22 A   Some code is constrained by the function of the software.

23 For example, we discussed that both of these programs load

24 information from a database, and because that database is

25 being accessed via a COBOL program, we'd expect the statements

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1   to be the same.

2   You access a database by using particular, required

3   functions. We sometimes call that an API. And you have no

4   choice, you must use that particular structure and characters,

5   but the names would be the same, it's required.

6   Q   Are we going to see some examples of that later?

7   A   Yes, we are.

8   Q   All right. What's the third unprotectible element you

9   filtered out?

10   A   Some code is constrained by logic or efficiency.

11   For example, continuing with the database, you try

12   to connect to a database, it's possible that that connection

13   fails, there's an error. So the logic would dictate you have

14   to handle that error.

15   And you would expect to see that in programs that

16   use resources like databases. That code would be unprotected

17   because it's constrained by the logic of needing to deal with

18   the database.

19   Q   And you keep using the word "constrained." Can you just

20   explain for us, you know, what do you mean by the code being

21   constrained.

22   A   These constraints that dictate a lack of creativity

23   because you must do things a certain way would be filtered out

24   as unprotected expression because the expression that we are

25   looking for in copyright, as I understand it, is protected

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1   expression, what would not be constrained, what would be

2   created.

3   Q   Your bullet 4 says "code constrained by standard

4   programming terms." Can you explain that, please.

5   A   Yes. In programming languages some terms would be the

6   same across two different programs because they're doing the

7   same thing or similar things. So, again, if it's a standard

8   programming term, we would filter that out as unprotected and

9   uncreative.

10   Q   And then can you please explain your last constraint on

11   this slide.

12   A   Programmers learn standard development conventions both

13   when they're in school and on the job. Different programs

14   have different conventions that programmers must follow.

15   Among those are standard conventions for naming

16   variables, for example. They must have both a form for the

17   variable in terms of whether it's upper case or lower case,

18   and then the naming of those variables would also follow

19   standard conventions.

20   Q   What do you teach your students at Duke regarding

21   standard conventions for programming?

22   A   We teach them that those conventions are very important

23   to follow. We have our own conventions in class that we model

24   after industry conventions, And we teach our students part of

25   your grade will be based on have you followed these

1   conventions correctly, not just does your program work.

2   And we know our students appreciate that because

3   after they get jobs they come back and say, "Thank you,

4   Professor Astrachan."

5   Q   Can you just give us an example of a convention or how

6   this is applied?

7   A   For example, if you were going to access a database using

8   a FETCH command, and that would be a word that's, for example,

9   described in the documentation that tells you what you're

10   going to do, you would call it FETCH. You wouldn't use

11   another name for it because that's what the documentation

12   says.

13   And when programmers are working together -- or even

14   if a programmer does something and comes back a year later and

15   they see FETCH, they'll say, "Ah, FETCH. I know what I'm

16   doing here."

17   You wouldn't call it some name like bowtie. That

18   doesn't make any sense at all. That wouldn't be following the

19   convention.

20   Q   Now, Ms. Frederiksen-Cross talked about I think what she

21   called a normalized line matching analysis. Did I get that

22   right?

23   A   Normalized line set count, yes.

24   Q   And what is that?

25   A   That's the process that she used to compare these two

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1   files.

2   Q   And how does that process work?

3   A   That process works by taking the lines in each file -- so

4   we have two files here, we're looking to see are they

5   substantially similar, and, first, you convert them all

6   to the same case so that we don't have upper and lower case

7   distinctions.

8   We remove extra white space. So if there are four

9   spaces, we would just use one. That way, we have what's

10   called the normalized lines. Some people might call that a

11   canonical or standard form. But normalized is also a word we

12   use in computer science.

13   And now we take those lines and we treat them as a

14   set. That means they're unordered, they're just a collection

15   of the lines in one program, and we compare those to a

16   collection of lines in the other program, and then we see how

17   many lines they have in common.

18   And Ms. Frederiksen-Cross uses -- used that number

19   of lines in determining that these programs were similar.

20   Q   And then you said -- I think you said the word unordered.

21   Can you just explain what that means about these two sets.

22   A   A set in both programming and mathematics has no order to

23   it. It's a collection.

24   So, for example, if we took a line from the

25   beginning of the file and a line from the end of the file, in

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1   this set they might match, but they don't occur at all in the

2   same place, and the location of lines in the file would be

3   important to determine whether, in fact, they are matching.

4   Q   And, in your opinion, was Ms. Frederiksen-Cross'

5   normalized matching lines methodology reliable for determining

6   substantial similarity?

7   A   No, I think it's completely unreliable for determining

8   substantial similarity.

9   Q   And why do you think that, Professor?

10   A   It doesn't use analytic dissection, which, as I

11   understand, is the method that should be used.

12   It doesn't filter out unprotected expression.

13   So in these normalized line counts we'd see program

14   statements, for example, and that means that it leads to what

15   I call false matches, that a line in one file might appear to

16   be similar to a line in the other file but, for many reasons,

17   that should be filtered out as unprotected expression, and

18   that methodology does not do that.

19   Q   Now, you talked about the different kinds of constrained

20   code.   Can you go through some examples -- let me back up.

21   Did you analyze the files to determine which lines

22   of code were constrained?

23   A   Yes, I did.

24   Q   And can you walk us through some of the things that you

25   found to be constrained?

1   A   Yes.   So I'll go through each of these in just a small

2   amount of detail.

3   So I mentioned the programming language syntax.   In

4   this case that's COBOL, and there are many COBOL commands that

5   every COBOL program would have, and I've listed some of these

6   here behind Setup, SELECT-SETUP, behind Data, SELECT Data,

7   ELSE, END-IF, END-PERFORM, EXIT Program, Sequel Error Exit,

8   and Main Exit.

9   Those are just some examples.   COBOL would have many

10 other statements like this that are dictated by the specific

11 syntax of COBOL.   We shouldn't count these.   They should be

12 constrained and unprotected expression.

13 Q   When you look at the comparison exhibit that

14 Ms. Frederiksen-Cross showed us earlier in her testimony, the

15 one that has the Rimini file on one side and the Oracle file

16 on the other side and purports to show lines matching, are

17 some of the matching lines these things that you have on slide

18 DDX-515?

19 A   Yes.   For example, END-IF, most programs have a statement

20 like if, if this value is positive, perform this action.

21   We might say, "If I think it's going to rain, I

22 carry an umbrella."   Now, in English, you can just say that.

23   But in COBOL, if you say if, you must say END-IF,

24 it's required.   So we would expect to see those matches.

25 Q   What's the other -- what's the next constraint that you

1   found?

2   A   These are conventional section headers. In a COBOL

3   program it's required by COBOL that you have divided the

4   program into what are called divisions.

5   So we see Identification Division, Environment

6   Division, Program Description, Data Division, Working Storage

7   Section. We would expect to see these in two different COBOL

8   programs because the language requires it.

9   Q   And, again, on her comparison, on Ms. Frederiksen-Cross'

10   comparison, are we going to see these on both sides of the

11   files?

12   A   Yes, and they should have been filtered out as

13   unprotected expression.

14   Q   Because these are required and they are not indicative of

15   copying -- well, let me ask it this way. Are these required

16   and are they indicative of copying?

17   A   They are not indicative of copying. A COBOL program

18   would have these divisions and they should be filtered out

19   rather than viewed as an indication copying.

20   Q   What's the next category of constraint that you

21   identified?

22   A   These are the asterisks that are used in COBOL to

23   surround a comment.

24   Comments are there for the programmer to look at so

25   that they know what certain sections of the program do.

1   They're not required by the language.

2   But, as I mentioned earlier, in COBOL all comments

3   must begin with an asterisk or a slash in column number 7,

4   and, by convention, they go across the screen until the end of

5   the line, and we saw that earlier.

6   So these aren't protected expression. They're not

7   creative in any way, and they shouldn't be used as matching

8   between two programs.

9   MR. McCRACKEN: Let's pull up DTX-501 so we can

10   see an example of this. Maybe just go to the first page of --

11   or maybe second page of 501.

12   BY MR. McCRACKEN:

13   Q   So, Professor, here we have some lines of asterisks. Can

14   you explain -- well, so are these the asterisks and comments

15   you're referring to?

16   A   Yes. So this is an example of what Ms. Frederiksen-Cross

17   and many other calls a flower box. It's called a flower box

18   because it looks as though someone has planted flowers around

19   the border.

20   And we see that each of the comment lines -- and on

21   this slide that's all three of the lines that have an

22   asterisk -- have a slash or a star at the beginning of the

23   line in column 7, and they have an asterisk at the end of the

24   line, too, in that last column.

25   And then the flower part of the box, the border,

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1   consists of asterisks that go across the line of COBOL.

2   So this is a common convention for comments in COBOL

3   and, in fact, in other languages. It's not creative. It's

4   not an indication of copying.

5   Q   Now, sure, Professor, but, you know, isn't it suspicious

6   if the Rimini file and the Oracle file have exactly the same

7   number asterisks in a line?

8   A   No. I mentioned that in COBOL it's a column-oriented

9   language, so all lines have the same number of characters.

10   Now, some of those might be white space and we might

11 not see them, but it's very common to see 80 asterisks on a

12 line in COBOL.

13 Q   And, Professor Astrachan, I think Ms. Frederiksen-Cross

14 said something in her testimony about idiosyncrasies regarding

15 having some lines start with a slash and asterisks as opposed

16 to just all asterisks. Do you recall that?

17 A   Yes, I recall that.

18 Q   Did I characterize what she said correctly?

19 A   Yes, I think that's correct, and I don't think that's an

20 indication of copying at all.

21 Q   Why not?

22 A   Well, first, as I mentioned, all comments must start with

23 either a slash or a star. It's very common to see the first

24 part of a flower box start with a slash star, as we see here.

25   And I think we have an exhibit that shows there's a

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1 section of the Rimini file that couldn't possibly appear in

2 the Oracle file that also uses slash star.

3 Q   Let's go to the same exhibit, let's go to page 6.

4   Professor, is there anything on this page that's

5 relevant to your opinions?

6 A   Yes. We can see what's at the bottom of the top page,

7 and the top of the second page where it says SELECT-PRVCHKS

8 SECTION.

9   As I mentioned at the beginning of my explanation,

10 selecting data for previous checks is a function that's in the

11 Rimini file. It's not at all in the Oracle file, it's missing

12 this functionality completely, and yet we see the slash star

13 beginning the flower box because the Rimini programmer has

14 followed that convention of beginning flower boxes with a

15 slash star.

16   Again, this is a very common convention.

17 Q   So I think you said, Professor, so this section of the

18 Rimini file, this has functionality that is not even present

19 in the Oracle file?

20 A   It's not present in the Oracle file at all so it could

21 not have been copied from the Oracle file since it's not

22 present.

23 Q   And, Professor, did you review the various flower boxes

24 in the Rimini file?

25 A   Yes.

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1   Q   What's the convention with regard to those flower boxes

2   and whether they start with a slash or an asterisk?

3   A   They uniformly start with a slash asterisk.

4   Q   On the top line?

5   A   On the top line.

6   Q   And then what about the bottom line?

7   A   The bottom line does not start with a slash star, it's

8   just a star. That convention is followed throughout the

9   Rimini file.

10   MR. McCRACKEN: All right. Let's take this

11   down, Mr. Jay. We'll go back to the slides.

12   BY MR. McCRACKEN:

13   Q   All right. Professor, can you tell us about the next

14   type of constraint that was relevant to your analysis.

15   A   I call this functional code. Code that performs a

16   specific function often needs to look the same across two

17   files.

18   Earlier I mentioned, if you're going to access a

19   database, you might have to use the same terminology to access

20   the database.

21   This shows another example of functional code that's

22   the same in both files, in fact, in every COBOL program, that

23   consists of what are called filler commands and pic commands,

24   and we see these in both files, and the format and syntax of

25   this command is dictated by the language.

1   Q   So this is referring to the lines that say 03 filler, and

2   they say pic, p-i-c, X, and then a number in parentheses, and

3   they usually say value all.

4   A   Yes.   We can see the value all C is on the next line

5   because this is two files together.   So the line would be 03

6   filler pic X 10 value all C, we see that on both sides.

7   And this slide shows in great detail that each part

8   of that line, the syntax and order on that line are required.

9   Q   Did you rely on any documents to confirm what syntax

10   needs to be used in these files?

11   A   Yes, to understand COBOL is used in Oracle's product, I

12   used their API document.

13   MR. McCRACKEN: Let's pull up DTX-500, please.

14   BY MR. McCRACKEN:

15   Q   Professor, this will be in your binder as well.   What is

16   this document?

17   A   We can see at the top this is a PeopleSoft SQL API for

18   COBOL, and the contents describe what's in it.

19   In general, this is a document that a programmer

20   would look at to understand how to write COBOL in a PeopleSoft

21   environment.

22   Q   Would you expect a skilled developer of PeopleSoft

23   updates to know the conventions described in this document?

24   A   Absolutely.

25   Q   And I think you said this describes an API.   Can you tell

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1   the Court what an API is.

2   A   Sure.   API standards for Application Programming

3   Interface, but that doesn't really describe what it does.

4   It's the form and order in which you must do things to achieve

5   specific results.

6   I often think about, when I'm sitting at home, I

7   have three remotes that control my TV because I have a lot of

8   devices, so I know I must turn on device one, press the red

9   button, then device two and press the green button.

10   That's essentially the API to turn on the

11   application which, in my case, is the TV connected to my media

12   center, and if I don't use that order in that way, it won't

13   work.

14   So the API there is you must do specific things in

15   specific orders to achieve the result you're looking for.

16   MR. McCRACKEN: All right.   And let's go to page

17   4, Mr. Jay.

18   BY MR. McCRACKEN:

19   Q   What does this document say about the filler code that we

20   just discussed?

21   A   It describes how that filler code works.   We can see at

22   the top it talks about the characters being C and H.   That's

23   in the first line there.

24   Q   And that's where we saw the value all C in the slide?

25   A   Correct.   If you're going to read characters, you must

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1   use a C. For example, if you're going to read numbers, you

2   would use a different designation, not C or H. C or H are

3   required when you're going to fill with character values from

4   your database, so that's required.

5   We even see the last line in that top paragraph, it

6   says "consecutive data elements of the same type." It's the

7   last sentence. Yes. "Alternate one of two characters

8   representing the data type."

9   So what that tells us is if we see a C, the letter

10   C, it's going to be followed by the letter H. That's required

11   by this API. That ordering is important. One line would have

12   a C, the next line would have an H, if it's both character

13   values, dictated by the API.

14   MR. McCRACKEN: And, Mr. Jay, I think -- can we

15   blow up the middle of the screen where there's some examples.

16   BY MR. McCRACKEN:

17   Q   And, Professor, can you just describe what we're looking

18   at here.

19   A   Well, here we see how the order of that line is

20   important. We saw earlier that it said pic X 10, and this

21   tells us that that ordering is required. We must see the pic,

22   followed by an X, followed by a number in parentheses,

23   followed by value, followed by all, followed by C.

24   This is an example not -- that uses that API, and

25   programmers would be cognizant of this example, and they would

1   write code that used these examples in what they did.

2   Q   What's the number in parentheses? What's that for?

3   A   That's the number of characters that will be read from

4   the database as part of this filler command.

5   Q   So if two programs are reading data from the same

6   database, would they have the same number?

7   A   If they're reading the same data in the same place, both,

8   for example, the data from January, then you would expect,

9   well, I have to ignore ten characters for January because I

10 want to know the date, perhaps.

11   And so you would read the same number of characters

12 because you're processing the same data. Yes, that's a

13 reasonable way of looking at it.

14   Q   And, in your opinion, Professor, are these filler

15 statements creative?

16   A   No, they are not, and I believe Ms. Frederiksen-Cross

17 said so in her testimony that they would be constrained.

18   Q   Now, how much of the allegedly matching lines on that

19 side-by-side exhibit that we saw consist of these filler

20 statements?

21   A   Because both of these programs are accessing database,

22 looking for particular elements in that database, there are

23 many, many filler commands. There are a lot of filler

24 commands in both programs, and those should be constrained and

25 filtered out as unprotected expression.

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1   MR. McCRACKEN: Let's take this down, Mr. Jay,

2   please, and let's get the slide deck back, please.

3   BY MR. McCRACKEN:

4   Q   Professor, I think we're on the slide for your next

5   constraint looking at DDX-519. Can you explain your next

6   constraint.

7   A   Yes. What I've labeled that in my diagram is "Same Code,

8   Different Function," and the header on this slide indicates

9   exactly what that means, the structure sequence and

10   organization constraints.

11   So when you look at this slide it might look like --

12   and in this example of side-by-side comparison, white means

13   the same. So we see what looks like, oh, 03 filler pic X 10,

14   that's line 243 on the left. It matches. 03 filler, pic X

15   10, that's line 64 on the right.

16   But I think if we go to the next slide that's

17   related to this, we'll see something that indicates these

18   aren't at all the same.

19   Q   And just for the record, the slide is showing Oracle

20   Exhibit 175 at page 9, and we're looking at the lines of code

21   that are 243 to 245 in the Oracle file, and 64 to 65 in the

22   Rimini file.

23   And so, Professor, you were saying go to the next

24   slide?

25   A   Yes.

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1   Q   All right.

2   A   Remember, this is Same Code, Different Function, and what

3   we see is -- and now those lines are circled, it might look

4   like line 243 matches line 64, they are the same characters in

5   the same order.

6   However, in the Rimini file, this is in a section

7   for common pay year-to-date, and in the Oracle file it's for a

8   state tax table of some sort.

9   They're in completely different parts of the

10   program, so they can't be matching because they're not doing

11   the same thing.

12   The structure sequence and organization in the Same

13   Code, Different Function should be taken into account in

14   determining whether lines of code match, and, in this case,

15   they don't.

16   Q   So if you're just looking at the side-by-side and looking

17   at the matches, you may think things match when they're

18   actually doing different things.

19   A   Correct. That's part of the false matching that I

20   mentioned earlier that's going to happen when you do this

21   normalized line count method.

22   Q   How much of the matching in Ms. Frederiksen-Cross'

23   analysis is accounted for by these constraints, the five

24   constraints you just talked about?

25   A   In my opinion, it's all of it. All of it should be

1   filtered out as unprotected expression. These aren't

2   substantially similar.

3   Q   All right. I want to talk about some of the sections of

4   the code that Ms. Frederiksen-Cross focused on in her direct

5   testimony as being allegedly created and protectible, okay?

6   A   Okay.

7   Q   And I think on your slide you have an example of some of

8   the code that she testified about?

9   A   Yes, I believe it's noted that this is OREX Exhibit 0175,

10   and this is also included in one of Ms. Frederiksen-Cross'

11   reports as perhaps the most imminent example of matching and

12   why these programs must have been -- why the Rimini program

13   must have been copied from the Oracle program.

14   Because, as we can see, there's a lot white space,

15   and white space means matching. Purple and tan mean they are

16   not matching.

17   But this is almost all white space so, in her

18   analysis, this would be an indication of copying.

19   Q   And we're looking at about, what, about 15 lines of

20   matching code?

21   A   Something like that, 15, 17. It's a very small number,

22   yes.

23   Q   How many lines of code are in the Oracle file?

24   A   Thousands.

25   Q   Professor, can you apply your analytic dissection to this

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1   area of code that Ms. Frederiksen-Cross claims is creative?

2   A   Yes.   We'll go from the beginning to the bottom.

3   We can see at the beginning this is a FETCH-CMPAY

4   and a FETCH-TAX-BALANCE, they're different parts, so I'm going

5   to the asterisks.

6   The Oracle file says FETCH-TAX-BALANCE, and the

7   Rimini file says FETCH-CMPAY.   That's just the title of these

8   sections.

9   I'm not looking at those.   I'm looking at the next

10   lines that are asterisks, and I've already mentioned that

11   these are not creative, conventional, and we'd filter out

12   these comments lines as an indication that there was

13   substantial similarity.   They're not protected expression and

14   they should be filtered out.

15   Q   Okay.   And we're looking at -- this is Oracle Exhibit

16   175, page 29, and we're looking at the lines that start at 885

17   and 886 in the Oracle file.

18   A   Yes.   And on the Rimini side it's 360, 361.   Those should

19   not be matching lines, they should be filtered out.

20   Q   Okay.   Let's get rid of those.

21   And then what's the next line, Professor?

22   A   The next line says INITIALIZE SELECT-DATA OF S-YTD.

23   And we see that's the same on both sides.   So

24   perhaps at first glance it might seem like, whoa, they're

25   exactly the same, but in fact they're not the same.   They're

1   dictated by convention, requirements of syntax, and the COBOL

2   API.

3   Q   Yeah, at a high level, Professor, what is this code

4   doing?

5   A   Both these programs are going to fetch data from a

6   database. And this part of the code is initializing that

7   selection. Initialize is required, Select Data is required.

8   Because it's a Select, the S is required.

9   The YTD is not dictated by the API, but it's a

10   standard label for year-to-date so it's not surprising that we

11   see YTD on both lines because of year-to-date.

12   Q   Well, Professor, couldn't the programmer call it

13   anything? Couldn't we call it Voldemort?

14   A   I appreciate your reference to Harry Potter,

15   Mr. McCracken, but you couldn't actually do that because

16   in following conventions, as I mentioned earlier, you learn to

17   use variable names indicative of their purpose.

18   So I would expect that we would use YTD for

19   year-to-date. That's a standard across programming, finance,

20   many things use YTD for year-to-date.

21   MR. McCRACKEN: All right. Mr. Jay, can we pull

22   up DTX-500 again and go to page 3.

23   BY MR. McCRACKEN:

24   Q   Professor, is there anything on this page that's relevant

25   to what you were just explaining about the initialize

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1   Select-Data step?

2   A   Yes.   We saw that this was a Select Data step at the

3   bottom of this page, which is, again, Oracle documentation,

4   that programmers read to determine how to write their

5   programs.

6   What we see in the second line, the sentence that

7   begins on the second line, "be sure," it says don't forget,

8   "Be sure to initialize this area before each

9   FETCH, because character fields are not blank-filled

10   on all platforms. If you do not clear the buffer, a

11   short character value might only partially replace a

12   longer value from a previous FETCH."

13   Q   So what's that saying in English?

14   A   What that says is, if you're a careful COBOL programmer,

15   you will initialize the area before you call FETCH. So you

16   must, if you're a careful programmer, initialize before FETCH,

17   and as we'll see, we're about to do a fetch so we're going to

18   initialize.

19   Q   All right. And I see at the bottom, bottom of the blow

20   up, it says Example, and it says SELECT-DATA of S-CHECK?

21   A   Yes.   That's the requirement, you have to call

22   select-data, and the S, as I mentioned, is required from

23   select.

24   Q   Is that similar to select-data of S_YTD which we see in

25   both programs?

1   A   It's exactly the same. As I mentioned, the only change

2   between this example and the program is, in the program,

3   because we're using year-to-date data, we use YTD.

4   MR. McCRACKEN: All right. Let's go back to the

5   demonstratives, please.

6   THE WITNESS: So we'd filter that out --

7   MR. McCRACKEN: Okay.

8   THE WITNESS: -- when we look at the next line.

9   BY MR. McCRACKEN:

10   Q   All right. So we're looking at Oracle Exhibit 175,

11   page -- oops.

12   All right. We're looking at Oracle Exhibit 175 at

13   page 29, and we're now analyzing the lines of code that are in

14   Oracle file 890 to 892.

15   So, Professor, can you apply analytic dissection to

16   these lines of code, please.

17   A   Yes. We just saw that we were initializing something

18   before a fetch, so we're about to do the fetch, and we're

19   calling ptpsqlrt, that's the required API in PeopleSoft to

20   access the database. We must use "call ptpsqlrt" as part of

21   accessing the PeopleSoft database.

22   And, because we're doing a fetch, we must say what

23   the action is because you might access the database to do

24   something, a store, but we're not, we're using a fetch.

25   So it's required that we see "ACTION-FETCH of

1   SQLRT."

2   And then, if we look at the API, we'll see that

3   these other lines are also required. So when we see "using

4   ACTION-FETCH of SQLRT," followed by "SQLRT," followed by

5   "SQL-CURSOR of S_YTD," all of that will be dictated by the

6   API.

7   Q   We'll see this in the API document?

8   A   Yes.

9   Q   Pull up the API document, DTX-500. And I think we want

10   the bottom of page 1 top of 2.

11   A   Right. Where we see Interface.

12   And it says, "API services are provided through

13   CALLS to the PTPSQLRT program," and that's the one we just

14   saw, calling it, and we can see here, CALL PTPSQLRT USING, and

15   our action here is a Fetch, so we're going to see

16   ACTION-FETCH.

17   And if we look at the bottom below what's

18   highlighted in that paragraph that's also been expanded, it

19   says,

20   "The actual list of parameters that are

21   needed depends on the action requested. For example,

22   a SELECT statement requires all of the previous

23   parameters."

24   Those are the values listed in the paragraph

25   above, those are the parameters.

—967—

1   "...a FETCH action requires only the first

2   three."

3   And the first three are USING action sqlrt and

4   cursor. Those are required, and the API explains that.

5   Q   So based on that paragraph at the bottom, if you're doing

6   a fetch action, you need to have the fetch action followed by

7   the sqlrt followed by cursor?

8   A   That is correct. That what this API is telling you, you

9   must have those in that order.

10   Q   All right. Let's go back to the slide, then, and see

11   what we see in the code.

12   A   What we see is ACTION-FETCH required, sqlrt required, and

13   the cursor, which is where you are in the database,

14   essentially, SQL-CURSOR, and then "of," the Select Statement

15   YTD. We've seen that before.

16   All of this is dictated by the API. It's

17   functional, it is required, and it should be filtered out as

18   unprotected expression.

19   Q   Now, Ms. Frederiksen-Cross testified that -- she

20   testified about these lines of code. Do you recall that?

21   A   Yes.

22   Q   And she said that you didn't need to say ACTION-FETCH,

23   you could have called it anything, not fetch, you could have

24   called it "go get 'em." Do you remember that?

25   A   I do recall "go get 'em" being mentioned, yes.

1   Q   What do you think about that?

2   A   I think that, as I mentioned before, sometimes syntax

3   dictates that something is required, and sometimes convention,

4   in terms of naming actions or variables, is also required.

5   If it's a fetch, we call it fetch, we don't call it

6   "go get 'em."

7   As I mentioned, in my class, if you named your

8   variable something creative that way, you would lose points.

9   Q   So a student in your class would lose points for naming a

10   variable something creative?

11   A   You want to use creativity in the process of what you're

12   doing, and that means if it's fetching, you would call it

13   fetch, you don't call it spoon, you don't call it go get 'em.

14   The names of your variables should be indicative of

15   their purpose and what convention would say. I'm confident,

16   if we looked at many COBOL programs, we would see fetch being

17   used, not "go get 'em."

18   Q   What about a professional software developer that works

19   for a publicly-traded company, would you expect them to follow

20   conventions?

21   A   I would absolutely expect them to follow conventions.

22   Q   All right. Let's talk about the next lines of code.

23   All right. So, Professor, can we filter this one

24   out?

25   A   Filtered it out.

1   Q   Let's talk about the next one.

2   A   We just called the database. We looked at the API and

3   saw that we were accessing the database, and the reason for

4   accessing the database is to pull values, to fetch values from

5   the database.

6   Once we've done that, we have to wait for the

7   database to give us an answer. We called it, and now we wait

8   for the result, and when we get the result, we have to write

9   code to handle that result.

10   And one of the things that could happen is when the

11   call to the database finishes, the return code -- and because

12   we call something in programming, we call -- we name what we

13   get back "the return value," as though I called you up and

14   then you returned my call.

15   I call the database, I get a return code. An RTNCD,

16   that's return code. That's just the label for return code.

17   That's required.

18   And what this says is if, when you access the

19   database, the call ended, the return code was END, then

20   perform a certain action.

21   So you would expect that both programmers would have

22   to handle that the call ended, and we see they both have what

23   to do if the return code ended.

24   And, in fact, they do the same thing. They first

25   say the call ended. So they set the value of the variable

1   "FETCH YTD end" -- because we just finished an end -- of that

2   select statement, that's "S_YTD," set the value to "true,"

3   because the call has ended.

4   There's no other choice there. The call has ended,

5   you must set the value to true.

6   Q   Do you think it's creative to write code that says that

7   the has ended, set the value to say the call has ended?

8   A   No, I don't think that's creative, and I think that part

9   should be filtered out as unprotected expression.

10   The next part is similar in that --

11 Q   What are you referring to, Professor, for the next part?

12 A   The call ptpsqlrt, we're calling that API again. You're

13 saying, "Hey, program that accesses the database, please

14 disconnect from the database."

15   And that's also a convention that all careful

16 programmers would follow. When you've made a connection to a

17 database, that's a resource, and you can't have unlimited

18 connections.

19   So careful programmers make sure they kind of clean

20 up after themselves. Once you've succeeded in accessing the

21 database, disconnect from the database.

22   And that's what this says. It says please call that

23 program, ptpsqlrt, using a disconnect action. That's

24 the action that you use to disconnect.

25   So this is, again, required by careful programming,

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1   disconnect from that program that accesses the database.

2   Q   And specifically, Professor, it shows the call, ptpsqlrt,

3   using action disconnect of sqlrt, and then it has another two

4   lines, sqlrt and SQL-CURSOR.   Are those all required?

5   A   Yes.   We just saw earlier that we filtered out the action

6   FETCH.   Now this an action disconnect.   And we saw in the API

7   it's required that you have these three elements: Action

8   disconnect -- and earlier we had ACTION-FETCH -- and then you

9   have to have sqlrt, and then you have to have SQL-CURSOR.

10   It's exactly the same API that we saw before for a

11   different action.   All of this should be filtered out as

12   unprotected expression.   These are not substantially similar.

13   Q   All right.   Let's move on to the next section of code,

14   and just for the record, I'll say what it is.   So we're

15   looking at Oracle Exhibit 175, at 29, and the lines are, in

16   the Oracle file, 900 through 909.

17   So, Professor, tell us -- well, first of all, some

18   of these lines of code are purple; so what does that mean?

19   A   Purple indicates that they don't match, and what we see

20   is -- on the Oracle side, for example, TAX-BAL.   I'm going to

21   assume that's for tax balance.   That's a label that the Oracle

22   programmer used.

23   On the right-hand side, we see CMPAY.   Now, we've

24   already discussed that this program is doing different payment

25   calculations.   The name of the file is RSPCMPAY.

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1   And so we'd expect that some labels are different

2   because these are different programs. So those parts are the

3   same, but they're dictated by the functionality of these

4   programs, and they're not the same, so they're not part of the

5   matching.

6   Q   All right. Can you apply analytic dissection to these

7   lines of code, please.

8   A   Yes. The section we looked at earlier was for a return

9   code that ended, and that means ended properly. We called the

10   database and we got back a result.

11   Now, the return code here -- and again, return code

12   is rtncd -- the return code is in error, and that could

13   happen. You try to access the database and you fail, or it

14   goes away.

15   All kinds of errors happen in programs, and careful

16   programmers write code to deal with those errors. We don't

17   want our program to just crash, we want to log the error so

18   that we can deal with it.

19   And so we'd expect all careful programmers to have

20   what do you do if the return code is error, and so we on line

21   900, if return code error of sqlrt, and we see that on the

22   right-hand side. This is just the section of code that deals

23   with errors.

24   And if we look at the body of this "if" statement,

25   we see that that's similar on both sides.

1   Q   And is that code creative, Professor?

2   A   No.   Again, it's processing the error in the same way.

3   First, it's moving something to the error section,

4   and we can see that on both sides.   I am moving -- it's

5   different because the programs are different, but that

6   movement to an error section is expected.   That way we can

7   handle the error.

8   And then when it says, "Perform ZZ000-SQL-ERROR,

9   that's indicating please perform this other part of the

10   program.   There's another part of the program labeled

11   ZZ000-SQL-ERROR that's designed to deal with errors.

12   We don't see that here.   This says go to that other

13   part of the program and please handle the error.

14   And in fact now we see the END-IF that I mentioned

15   earlier is required, and then we see the ELSE which is also

16   required.

17   Q   And, Professor, I think Ms. Frederiksen-Cross testified

18   that the files had this error code at the end of the files,

19   and that was indicative of copying because you could put the

20   error code anywhere in the file.   What do you think about

21   that?

22   A   I think that's another example of convention.

23   By convention COBOL programmers put the error

24   handling at the end, and if it's at the end, it will have that

25   ZZ000 designation.   Because ZZ is the last character of the

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1   alphabet, it indicates that this section is coming at the end.

2   Again, that is a common convention.

3   Q   All right. So, Professor, is this code, line 900 to 909,

4   is that protectible in your opinion?

5   A   In my opinion, no. It should be filtered out as

6   unprotectible.

7   Q   All right. And what did you conclude regarding this

8   passage of the side-by-side exhibit regarding whether these

9   files are substantially similar?

10   A   Using analytic dissection, which I understand is the

11   proper technique to determine if two files are substantially

12   similar, it's clear that they are not because they have

13   literally nothing in common.

14   Q   All right. I want to walk through some of the other

15   sections of the code that Ms. Frederiksen-Cross claimed were

16   protectible and indicative of Rimini having copied Oracle.

17   MR. McCRACKEN: Let's go to Oracle Exhibit 175,

18   at page 6, please, and, Mr. Jay, if you could focus in on 139

19   on the Oracle file.

20   BY MR. McCRACKEN:

21   Q   Professor, did you hear Ms. Frederiksen-Cross testify

22   about this line of code on Monday --

23   A   Yes.

24   Q   -- might have been Tuesday?

25   Sorry, I talked over you.

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1   A   Yes. Sorry. Yes.

2   Q   What did she say about this?

3   A   Well, we see the same line on both sides.

4   And, again, we have already determined that cursor

5   is a common name for a cursor. So this says SQL-CURSOR, and

6   then PIC 9999 VALUE ZERO COMP.

7   We'd expect a program that's dealing with the cursor

8   to use the label cursor. In both cases, its dictated by the

9   fact that this is going to be a nine -- sorry, a

10 four-character value. The 9999 means four digits, and we're

11 setting it to zero.

12 Q   Professor, for us non-programmers, what's a cursor?

13 A   A cursor is not what we see on the screen. Sometimes

14 people use the word cursor as where there's a blinking on the

15 screen.

16   But that's actually not too far away from what's

17 being said here, because the cursor on the screen is a

18 location on the screen. When you see the cursor blinking,

19 it's a location.

20   A cursor in a file or a database is where are you in

21 that file or database. You might have already read a 100

22 values, so your cursor in on the hundred and first value.

23 It's where you are, the same way the cursor on the screen is

24 where you are.

25 Q   I think Ms. Frederiksen-Cross testified that you don't

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1   have to call this cursor, you could call it something else.

2   Would you do that?

3   A   No. As I mentioned before, again, variable names should

4   be indicative of their purpose. That's a standard programming

5   convention. That's what careful programmers would do.

6   Q   Will we see that in the API?

7   A   Yes, we will. We already saw a cursor in the API, but we

8   can look again and see it one more time.

9   Q   Now, let's look at DTX-500 at page 6. And, Professor, is

10   there a place on page 6 we should look?

11   A   Right in the middle of the page it says SQL-CURSOR, and

12   it indicates that this is a four-digit computational number

13   that represents a resource connection unit.

14   So the key there is four digits, that's why we saw

15   9999, and computational number, that's why we saw c-o-m-p,

16   that's for computational.

17   So this API is dictating the form of that line.

18   Q   Do you think it's surprising, then, that the code written

19   by Rimini, and the code written by Oracle have the same line?

20   A   No. I think that's standard common programming practice

21   and not an indication of copying.

22   Q   All right. Overall -- so, Professor, did you apply

23   analytic dissection to the entire comparison, Oracle Exhibit

24   175?

25   A   Yes, I did.

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1   Q   And what was your conclusion after performing analytic

2   dissection?

3   A   That these programs are not substantially similar.

4   Q   All right. Let's go back to your demonstratives.

5   And you said earlier that there's a second step to

6   your analysis. Can you explain what that is.

7   A   Yes. First, we conduct analytic dissection, and, as I

8   mentioned in my opinion, my analytic dissection indicates, as

9   I think is agreed by others performing this similarly, these

10   are not substantially similar. They are not matching.

11   But if I had found matching portions, I'd then have

12   to look to see are these matching portions a substantial

13   portion of the copyrighted work. Again, it's my understanding

14   that that's the legal basis for substantial similarity.

15   Q   And what is the copyrighted work in this case?

16   A   The copyrighted work in this case is all of PeopleSoft,

17   as I understand it, that's what's copyrighted.

18   Q   So what did you determine when you did step number two?

19   A   First, I don't think that these matches are substantially

20   similar, but if they were, clearly they're not a substantial

21   portion of the copyrighted work.

22   Oracle PeopleSoft is thousands of lines, thousands

23   of files, millions of lines of code. This is a tiny piece.

24   It's less than a percent. At most, it's probably zero. So

25   it's not substantial portion.

1   Q   Did you analyze whether the lines of code that

2   Ms. Frederiksen-Cross claimed were protectible were

3   qualitatively important to this file or to PeopleSoft?

4   A   Yes. And, in my opinion, they're not qualitatively

5   important, they're simply pulling information from a database

6   as part of a specific function. They're not qualitatively

7   important to PeopleSoft.

8   Q   Do you recall whether Ms. Frederiksen-Cross even claimed

9   that they were qualitatively important?

10   A   I don't recall her saying that.

11   Q   All right. Professor, Ms. Frederiksen-Cross testified

12   about some unique -- I think, in her words, unique or

13   idiosyncratic spacing in the two files. Do you recall that?

14   A   Yes, I do.

15   Q   What was she saying?

16   A   Ms. Frederiksen-Cross said that because some words had

17   two spaces -- and, for example, one of the words was t-o, and

18   another word was c-o-m-p, and we see the c-o-m-p on this

19   slide, that because there are two spaces before the comp, that

20   that idiosyncratic two spaces, let's say, rather than one, was

21   an indication of copying.

22   Q   So here on this slide, on DDX-535, we're looking at

23   Oracle Exhibit 175 at page 6, and we're looking at the line of

24   code that's the Oracle line at 139.

25   And so what are we looking at here with the red

1   boxes on your slide?

2   A   The red boxes indicate two spaces between zero and comp.

3   And Ms. Frederiksen-Cross contended that the fact that there

4   are two spaces here, and sometimes one space, that that

5   idiosyncrasy was an indication of copying.

6   Q   And do you agree, Professor?

7   A   No, I disagree.

8   Q   Why do you disagree that the spacing does not indicate

9   copying?

10   A   Well, first, both files use a combination of different

11   spacing. We're going to see some examples with t-o that had

12   two spaces before and sometimes one space before, and that's

13   not the same in all files. Sometimes there are two spaces

14   before the word "to," sometimes there's one space.

15   And we'll see that in the situation with c-o-m-p,

16   there's a very good reason that there're two spaces before the

17   c-o-m-p, and those good reasons are, as we'll see in a slide,

18   not an indication of copying but an indication of programmers

19   following convention.

20   Q   All right. Let's look at one of your examples. We're

21   looking at DDX-537 which is showing a copy of the Rimini file

22   DTX-501, page 7.

23   Professor, can you explain how this relates to your

24   opinions.

25   A   Yes. Ms. Frederiksen-Cross said that the occurrence of

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1   two spaces before the word "to" and two spaces after it, and

2   that's what we see on this slide, two spaces before the word

3   "to" and two spaces after, that because that was in common, in

4   her diagram, between both files, that was an indication that

5   the Rimini file had been copied from the Oracle file.

6   But in this example, this is from the SELECT-PRVCHKS

7   section. That's in the Rimini file and it's not in the Oracle

8   file so it can't be an indication of copying because it

9   doesn't appear at all in the Rimini file.

10   And if we look at all of the Oracle file and all of

11   the Rimini file, we'll see sometimes there's two spaces,

12   sometimes there's one.

13   It's not as though this is unique and only occurs

14   once. There are many occurrences of two spaces on either side

15   of "to," and many occurrences of one space.

16   In this slide it's clear that it can't be an

17   indication of copying because this section does not occur in

18   the Oracle file.

19   Q   So let me just make sure I understand what's happening.

20   So on the slide, we're looking at Rimini file; is

21   that right?

22   A   That's correct.

23   Q   And is this is a section of the Rimini file that has no

24   analogous section in the Oracle file?

25   A   Yes. We can see the flower box says SELECT-PRVCHKS

1   section, and, as I mentioned at the outset, that's

2   functionality that's in the Rimini file but it's not in the

3   Oracle file, so it can't be copied because the functionality

4   is missing.

5   Q   The Oracle file doesn't have any code that deals with

6   selecting previous checks?

7   A   None.

8   Q   And here we see Rimini was using a convention of having

9   two spaces around the word "to."

10   A   In this part of the program, that's correct.

11   Q   And in your opinion, Professor, do they do that in other

12   places in the program?

13   A   Yes. I indicated that there are several places that have

14   two and several places that have one. That's not an

15   indication of copying.

16   Q   All right. Let's go to your second example.

17   A   This is the c-o-m-p.

18   And, in this version of the diagram, there are two

19   spaces before the word "comp." That is not an indication of

20   copying.

21   Q   So hold on. Let me just set the stage here.

22   So we're looking at a slide that's showing DTX-501,

23   and the line that says VALUE ZERO COMP; is that right?

24   A   That's correct. And it's labeled original spacing. This

25   is the version that's in the Oracle file -- sorry, in the

1   Rimini file. We have two spaces before "comp."

2   Q   And Ms. Frederiksen-Cross was noting that the -- a line

3   in the Oracle file also said this same thing with the

4   SQL-CURSOR, or the PIC 9999 that you explained has to be that

5   way, and also has two spaces?

6   A   Yes. And, as I understand it, she claimed that that two

7   spaces was an indication of copying.

8   Q   Okay. Well, why are there really two spaces there,

9   Professor?

10   A   Well, there are two spaces there so that the word c-o-m-p

11   that's at the end of the line lines up with the other

12   occurrences of c-o-m-p.

13   So when we draw a line straight down, we'll see that

14   the C is lined up with the Y, in Y to date, which is lined up

15   with the C in comp at the bottom.

16   And I mentioned that COBOL programmers line things

17   up. That's very common.

18   So the two spaces here are because the programmer

19   wants to ensure that the comps are aligned. It wouldn't look

20   the same if we only had one space.

21   Q   What's it looks like if you do one space instead?

22   A   Well, if we only have one space and we draw that line,

23   we'll see that the C isn't aligned because it doesn't have two

24   spaces.

25   The two spaces there are to ensure that this is

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1   lined up. They're not an indication of copying, they're an

2   indication of following COBOL conventions.

3   Q   Now, let me ask you, Professor, if one were to have used

4   the Oracle exhibit, Oracle Exhibit 237, which did not have the

5   fixed-width font as we looked at earlier today in your

6   testimony, would anybody notice the spacing issue?

7   A   You wouldn't see the lining up with the spacing issue

8   because a fixed-width font would not have been used.

9   Q   So you'd miss this.

10   A   You would miss this.

11   Q   Professor, if you asked your students to write a program

12   that pulls data from a database, and you had two students turn

13   in files that looked like the Rimini file in this case, would

14   you report them to the dean for copying?

15   A   No, I wouldn't, because even though it appears, on first

16   glance, that there's some similarities, as I just showed,

17   analytic dissection indicates that these constraints of

18   programming language and functionality and API would indicate

19   they are not substantially similar, and I would not turn them

20   in.

21   Q   All right. Professor, based on all of your analysis with

22   these two files, what are your final conclusions?

23   A   The normalized line count is an unreliable methodology.

24   As I mentioned, these files have substantially

25   different functionality. They don't do the same thing even

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1   though they pull information from the same database.

2   The matches that are purported to be matches aren't

3   protectible expression. Even if we assume they were

4   protected, which they aren't in my opinion, clearly they are

5   *de minimis*, and they're not substantial.

6   So the Rimini file, PSPTARRY -- sorry, rspcmpay, and

7   the Oracle file, PSPTARRY are not substantially similar.

8   Q   All right. Thank you, Professor.

9   Let's move on to the next issue. So we're

10   going to move on to Issue 9, which is a JDE technical

11   specification. Can you describe to us what the dispute is

12   there.

13   A   Yes. As I understand it, there's a JDE technical

14   specification written by Rimini engineers, and

15   Ms. Frederiksen-Cross contends that it contains JDE source

16   code.

17   MR. McCRACKEN: All right. Let's look at

18   Exhibit 80, please -- sorry, Oracle Exhibit 80, please.

19   BY MR. McCRACKEN:

20   Q   Is this the technical specification that is alleged to

21   contain come copied Oracle code?

22   A   Yes. This is the JDE update technical specification, and

23   we can see it's many, many, many pages.

24   Q   How many pages is it, can you tell?

25   A   I believe, at the bottom we see that it says this is page

1   1 of 49.

2   Q   And just generally, Professor, can you describe what's in

3   the technical specification?

4   A   Yes. We can see all the parts of the technical

5   specification and we've heard about them before, that this is

6   a document that describes the changes that are going to be

7   made. It describes the process that went into making those

8   changes. It describes the JDE objects that are going to be

9   part of these changes.

10   So it's a lengthy description that describes the

11 changes and the process going into making those changes.

12 Q   Maybe we should look at page 2, it's the Table of

13 Contents.

14 A   It's --

15 Q   Go ahead, sorry.

16 A   I mentioned already, the Design Approach, the Object

17 Changes, the Summary of the Object Changes, and we can see

18 that in this technical document it's going to be a summary for

19 EnterpriseOne and JDE World.

20   A lot of information that the Rimini engineers used

21 to create this, and then used -- and then to use it are in

22 this technical specification.

23 Q   What's an object change?

24 A   In JDE, part of JDE are objects, and they need to be

25 changed to achieve specific functionality.

1   Q   All right. Let's turn to page 10, please.

2   Now, I believe this is the part of the technical

3   specification that's going to start getting into code changes.

4   Can you tell, is this part of the technical

5   specification for EnterpriseOne or --

6   A   I think if we zoom back out, we'll see at the top it says

7   System Object Specifications (E1). That's on 1.3.4 at the top

8   of the page, and that E1 is for EnterpriseOne.

9   Q   Okay. Let's turn the page to page 11, please.

10   And, Professor, what are we seeing on page 11?

11   A   On page 11 we're seeing part of the document that a

12   Rimini engineer would use to create this update in JDE.

13   And what we have here is the code written by the

14   Rimini engineer, that's in the box with a rectangle around it

15   that says Add, and we see two boxes of that on this page.

16   And if we kept flipping the pages, we would see more

17   and more boxes, because the Rimini engineers have created a

18   lot of Rimini code that are going to be added to the JDE to

19   make -- to add this functionality for the update.

20   MR. McCRACKEN: Let's do that. Let's flip

21   through some pages. Can you go to page 12, Mr. Jay.

22   BY MR. McCRACKEN:

23   Q   So, again, we're seeing the Rimini code in the boxes that

24   say Add?

25   A   All the boxes that say Add, also begin with Begin RS,

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1   that's Begin Rimini Street. So all of the code in the boxes

2   is written by Rimini developers.

3   MR. McCRACKEN: Mr. Jay, can you just flip

4   through, maybe, five to eight pages.

5   Thank you.

6   And so let go back to page 11, if we can.

7   BY MR. McCRACKEN:

8   Q   So, Professor, what was Ms. Frederiksen-Cross' allegation

9   with respect to this file?

10   A   Her allegation is that JDE source code is copied into

11 this file. I disagree.

12   Q   And what are the pieces of code that she claims are

13 copied?

14   A   Well, what we see before these boxes are lines that I

15 call markers. For example, before the first box, we see OC

16 and then Corr and then Roth and some other aspects, and we see

17 some ellipses.

18   This is a marker. This isn't code. It's based on

19 code in the JDE file, but this is a marker to indicate to the

20 developer where to add the Rimini-developed solution that's

21 going to be added.

22   So this is simply a marker based on the code in the

23 JDE file, but by itself this is not code.

24   Q   What do you mean by a marker? What was the purpose of a

25 marker?

1   A   Well, as I mentioned, all the Rimini code that's here

2   needs to be added into the JDE environment at a specific

3   place.

4   So you can't just add it anywhere, you must add it

5   where it's going to do its job, perform the function that it's

6   written for, and that's at a specific place.

7   So the marker indicates where you look in the JDE

8   file. So you're going to be looking at the source code in the

9   JDE file on the client's environment. You need to know where

10   to look, and this is a marker that indicates where to look.

11   Q   Are the ellipses significant to you?

12   A   Yes. The ellipses indicate, first, that the programmer

13   writing this marker was affirmatively trying not to write all

14   the code, that they were taking steps to avoid actually

15   including code and just including a marker to indicate where

16   to go.

17   Q   Can you run this piece of partial code, the ellipses or

18   without?

19   A   You cannot run this. As I mentioned, it's not code.

20   Even if the entire line was here, you wouldn't be able to run

21   it because it's not in a JDE object or program.

22   So it's not runnable, it's not the whole line of

23   code, it's a marker based on that line of code.

24   Q   Is it creative?

25   A   No, it's simply indicating where in the JDE file we're

1   going to add our Rimini-developed code.

2   Q   Are there any alleged lines of copied code in the

3   technical specification that are performing some purpose other

4   than simply serving as markers?

5   A   No.   When I heard Ms. Frederiksen-Cross in court, she

6   actually used the word "marker" and, I believe, "segment"

7   because "snippet" meant too much.   But in either way, it's

8   simply a marker, that's what I heard.

9   MR. McCRACKEN: Let's look at another page of

10   this.   Let's go to page 26, please.

11   BY MR. McCRACKEN:

12   Q   And, Professor, what are we looking at on this page?

13   A   We're looking at another example of Rimini-developed

14   code, and we're looking at the marker before it.

15   And this is a rather lengthy marker.   It begins

16   "If," and then we see "VArpt," and then there's several lines.

17   Some of the lines are only ellipses.

18   So there's absolutely nothing here, no characters

19   related to what we would find in the actual JDE file.

20   Q   And what's the purpose of this?   Why did somebody put

21   this -- these words and then a bunch of ellipses into this

22   tech spec?

23   A   Again, it's a marker indicating where to go in the JDE

24   file to add the Rimini-developed code, and it's enough of a

25   marker to be able to find it.

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1   But, again, the person who wrote this technical

2   specification included enough to make sure that we could find

3   where to go. But by putting ellipses here, it's clearly not

4   code.

5   Q   Professor, with your 30 plus years of experience as a

6   Professor, can you tell what this Oracle code is by looking at

7   this technical specification with a bunch of ellipses in it?

8   A   No, I could not possibly fill in those ellipses with

9   actual code, so I don't know what the code actually does

10   without looking at the file from which it came which I'd find

11   by using this as a marker.

12   Q   How many lines of code are in the original Oracle JDE

13   EnterpriseOne file that this -- these snippets are allegedly

14   copied from?

15   A   I think it's something like 8,000; more maybe.

16   Q   Do you think Rimini copied a substantial portion of that

17   file?

18   A   No. First, I don't think Rimini copied anything. I

19   think Rimini looked at that code and created a marker as to

20   know where to go.

21   But I also think that these lines are certainly a

22   tiny portion of the file as a whole, but I don't think they're

23   copied.

24   Q   Do you think Rimini's technical specification is

25   substantially similar to Oracle's JD Edwards file?

1   A   No.   It's not substantially similar.   It includes no

2   code, simply markers based on that code, and it's absolutely

3   *de minimis* by any stretch of the word *de minimis*.

4   MR. McCRACKEN: Let's go to page 32, please.

5   BY MR. McCRACKEN:

6   Q   So here, Professor, are we going to start looking at the

7   Rimini code for the JDE World version of JDE?

8   A   Yes.   We can see at the top it says 1.3.5, the System

9   Specifications for JDE World.

10   MR. McCRACKEN: Okay.   Let's turn the page --

11   actually, let's go to page 36, please.

12   BY MR. McCRACKEN:

13   Q   And I believe Ms. Frederiksen-Cross testified about this

14   particular page in her testimony.   Do you remember that,

15   Professor?

16   A   Yes, I do.

17   Q   What was her allegation?

18   A   That this was code that was copied from the JDE file.

19   Q   What specifically was code copied?

20   A   The parts of this line -- so the line I'm reading says,

21   "Add code lines before the "If $CT3," I read

22   that as not equal to "$T3 OR" conditional block."

23   So I believe Ms. Frederiksen-Cross contends that

24   the "if $CT3" not equal to "$T3 OR" was code, but it's not,

25   it's a marker.

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1   Q   And what purpose is it serving?

2   A   It's serving to find where in the JDE World file we would

3   add the code developed by the Rimini engineer.

4   For example, this "OR" conditional block," that's --

5   by itself this isn't code because the "OR" conditional block"

6   is similar to an ellipses. This wouldn't run, and there's

7   many parts missing after it.

8   In terms of the actual "OR" conditional block,"

9   that's a lengthy piece of code. This is just a tiny part of

10   it that indicates where we would find the location to add the

11   Rimini-developed code.

12   Q   What's an "OR" conditional block"?

13   A   An "OR" conditional block" is, I might say, well, if it's

14   rainy, or it's Friday, or I'm ready, I'll go do something.

15   So the "OR" is those conditions. If it's rainy or

16   Friday, I'm going to go do something. Well, it's Friday,

17   so --

18   Q   So in the Oracle file are there a long list of these

19   conditions?

20   A   Yes.

21   Q   And is the "CT3" -- you called it not equal to "T3," is

22   that just one of them?

23   A   No, that's the condition.

24   The "CT3" not equal to "T3" says if that's true, or

25   something else is true, or something else is true -- so, yes,

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1   that is one of the conditions.

2   Q   Does that code, by itself, is it creative to you?

3   A   No, it is not.

4   Q   Does it do anything by itself?

5   A   No. First, it would have to be part of a program, then

6   you would have to have the rest of the conditional block which

7   is missing. So it doesn't execute, and it's, as I mentioned

8   earlier, simply a marker.

9   MR. McCRACKEN: All right. Let's take that

10   down, please, Mr. Jay.

11   BY MR. McCRACKEN:

12   Q   And, Professor, how many lines of code are in that JDE

13   World file, if you recall?

14   A   It's roughly 4,000 lines in the World file.

15   Q   Wow.

16   Just to wrap this up, in your opinion, is the

17   inclusion of those marks in the Rimini technical

18   specification, is that copyright infringement in your opinion?

19   A   No, it's not because, as I mentioned, it's not code, it's

20   markers, and, it's not substantially similar.

21   Q   All right. Thank you, Professor.

22   Let's move on to your next opinions. So what's

23   coming next, Professor?

24   A   Next we have four issues that I have used the label

25   Cross-Use Or Derivative Work to describe, and we're going to

1   walk through these, as I understand it.

2   Q   Now, Professor, how do you analyze whether --

3   MR. McCRACKEN: Oh, we have new binders hand

4   out. Sorry. Thank you very much.

5   BY MR. McCRACKEN:

6   Q   All right. Professor, how do you analyze whether some

7   activity by Rimini is cross-use?

8   A   I think we have a demonstrative that describes this.

9   Q   Yeah. We're looking at DDX-544.

10   A   Right. So we see here, paragraph 4 from the permanent

11   injunction order, and there are two steps.

12   One, there must be a reproduction or derivative work

13   of Oracle software.

14   And then, two, if there is a reproduction or

15   derivative work of client A's Oracle software, we determine

16   whether this was solely to support client A or to support

17   another client, and it's not cross-use if the reproduction is

18   to support client A and not another client.

19   Q   Is it cross-use if there is no reproduction or derivative

20   work or use of Oracle software?

21   A   No, it is not, we must see both these.

22   Q   Professor, did you have an understanding of derivative

23   work that you applied for purposes of your analysis?

24   A   Yes, I did.

25   Q   What was that?

1   A   I understand that to be a derivative work it must

2   substantially incorporate protective material from a

3   preexisting copyrighted work, and it must exist in a concrete

4   or permanent form.

5   Q   Before we dive into the specific issues, are

6   there any major areas of disagreement you have with

7   Ms. Frederiksen-Cross as it relates to derivative works

8   and cross-use?

9   A   Yes. I think her understanding of cross-use is overly

10   broad, that it wouldn't allow Rimini engineers to reuse the

11   know-how and knowledge that they have, that they've learned in

12   performing their work, and that, as she views it, it wouldn't

13   allow Rimini engineers to write their own code and use it in

14   more than one environment.

15   Q   From the technical perspective -- and I know you're not a

16   lawyer -- does the injunction prohibit Rimini reproducing its

17   own work product?

18   A   It does not, as I understand it, no.

19   Q   Can you give me an example of how Ms. Frederiksen-Cross'

20   cross-use theories as applied restrict Rimini's use of its own

21   know-how and work product.

22   A   As I understand Ms. Frederiksen-Cross' theories, once an

23   engineer develops a solution for a client, for that client, it

24   might be impossible to ever use that solution or knowledge for

25   any other client. That doesn't make any sense to me in terms

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1   of how software is developed and used to support clients.

2   Q   All right. Let's turn to your next issue, which I think

3   is Issue 3, and can you just describe to us what the issue is

4   with Issue 3.

5   A   Yes. We can see this on this slide, and we've seen this

6   several times in previous days.

7   Johnson Controls reported an issue with their W2

8   form, that text was cutoff in box 14 and box 17, and they

9   asked Rimini to help them fix this problem.

10   Q   And what was Ms. Frederiksen-Cross' contention with

11   respect to this particular update?

12   A   That by fixing the update in the City of Eugene's

13   development environment, and then using the knowledge that

14   they gained to fix it in Johnson Controls, that that was

15   cross-use, and they used some e-mail to understand --

16   Ms. Frederiksen-Cross used some e-mail in support of that

17   theory.

18   Q   Yeah, And what did Ms. Frederiksen-Cross rely on for her

19   opinions about cross-use?

20   A   This e-mail says Sheffield -- that's Don Sheffield, a

21   developer from Rimini -- states he tested the proposed

22   solution here locally on COEX -- as I understand it, that's

23   the City of Eugene's development environment -- but in the

24   e-mail he didn't state that he tested it at Johnson Controls.

25   Q   Do you agree with Ms. Frederiksen-Cross' opinion that

1   this update constituted cross-use?

2   A   Absolutely not.

3   Q   Why is that?

4   A   First, Ms. Frederiksen-Cross ignored that the City of

5   Eugene was one of many clients that would potentially be

6   affected by this bug.

7   Testing a solution to this bug in the City of

8   Eugene's environment isn't cross-use because the City of

9   Eugene would be affected by this bug potentially, and, then,

10   the solution that was developed was specifically tested in

11   JHN's environment.

12   Q   Why do you say that many clients would potentially be

13   affected by this bug in the W2 form?

14   A   Well, in the e-mail that Ms. Frederiksen-Cross relied on,

15   we that in the e-mail that many clients would be potentially

16   affected by this bug.

17   Q   Let's look at DTX-302 at page 2.

18   Professor, if we'd look at this, is there anything

19   in this e-mail that was significant to your opinions?

20   A   The second line of the e-mail that starts with "Looks,"

21   we see,

22   "Looks like this could be a potential problem

23   for all new clients switching from tax960us to

24   rsi960us who have left the formatting field blank."

25   That's an indication that there are all -- many

1   new clients, many new clients might potentially affected by

2   this bug.

3   Q   And if we go up to the top e-mail on page 2 of DTX 302,

4   so pages 1 and 2 of DTX 302 --

5   A   At the top -- right after that. That's one, thank you.

6   Q   Yeah, Professor, what about DTX-302 at pages 1 and 2 is

7   significant to your opinion?

8   A   There's a reference to GPT, Global -- sorry, GPD, Global

9   Product Delivery.

10   "Please let me know after you scope if you

11   think other clients could be impacted."

12   So clearly Rimini is thinking that other clients

13   are going to be impacted by this bug.

14   Q   Is this the e-mail that Ms. Frederiksen-Cross relied on

15   for her opinion that this was cross-use?

16   A   Yes.

17   Q   Let's look at DTX-304, page 1.

18   And, Professor, what about this e-mail is

19   significant to your opinions, if anything?

20   A   There's an e-mail here that says, "I think putting print

21   format B999999.99 will work."

22   And then it says,

23   "I think this will be a potential issue for

24   clients that received rsi960us and that have this

25   setup."

999

1   So, again, it's clients that have received this

2   update will be potentially affected by this bug. All their

3   clients would be potentially affected, and Rimini would have

4   to create this solution for them.

5   Q   Is City of Eugene one of the clients that has

6   rsi960us.sqr?

7   A   Yes, that's my understanding, they do.

8   Q   What was the ultimate solution that Rimini found with

9   regard to solving this truncated digits issue?

10   A   Well, we actually see that in this e-mail. It developed

11   that putting B999999.99, putting those characters into the

12   print format field fixed the bug.

13   Q   Is this typing those literal characters into a box?

14   A   Yes. Now, that box is in the PeopleSoft environment in

15   this case for the client. But, yes, simply typing those

16   characters into that box fixed the bug.

17   Q   All right. How did Rimini develop this fix for City of

18   Eugene and Johnson Controls?

19   MR. McCRACKEN: Let's get our slide deck back.

20   BY MR. McCRACKEN:

21   Q   So we're looking at DDX-551, and, Professor, could you

22   use your demonstrative to explain how this was developed for

23   City of Eugene and Johnson Controls.

24   A   Right. We saw an indication of this in the e-mail, that

25   Rimini engineers determined that typing B999999.99 into that

—1000—

1   field in the City of Eugene's environment to fix the bug for

2   the City of Eugene who would be potentially affected by that

3   bug, it did in fact fix that bug.

4   So they developed this solution by going into the

5   City of Eugene's development environment and trying it and

6   seeing that it worked.

7   Q   In you opinion, Professor, is going into the City of

8   Eugene's environment and typing in B999, was that cross-use at

9   that point, Professor?

10   A   No, because the Rimini engineers knew that the City of

11   Eugene was in the United States and had contracted to get

12   these W2 updates, so they were fixing the City of Eugene's

13   environment because they were potentially affected by the bug.

14   Q   Who, in your opinion, was Rimini supporting when it

15   tested this B999 fix in City of Eugene's environment?

16   A   They were supporting their client, the City of Eugene,

17   because they had been contracted to support the City of

18   Eugene, and that fix was for the City of Eugene.

19   Finishing my description, once that -- once the

20   engineer determined that, they instructed Johnson Controls to

21   make the same fix.

22   So they've simply reused the knowledge that they've

23   gained from making the fix in the City of Eugene's environment

24   for the City of Eugene because they would be potentially

25   affected by the bug. They then used that knowledge and

-1001-

1   know-how to fix the bug by calling Johnson Controls and saying

2   please try this.

3   Q   Was the B999 -- how was that implemented in Johnson

4   Controls' system, if at all?

5   A   A Johnson Controls IT support or engineer person went in

6   and typed that into their environment.

7   Q   And was Rimini using Johnson Controls' PeopleSoft

8   software at that point?

9   A   Either Rimini had instructed someone to use Johnson

10   Controls' environment to fix Johnson Controls' problem, so

11   they were using Johnson Controls' PeopleSoft environment to

12   fix the bug for Johnson Controls.

13   Q   Is that cross-use?

14   A   No, it is not because in this case they were using

15   Johnson Controls' environment for Johnson Controls.

16   Q   Was this update tested in Johnson Controls' environment?

17   A   Yes, it was.

18   MR. McCRACKEN: Let's look at DTX-302 at page 2,

19   please.

20   BY MR. McCRACKEN:

21   Q   Is this an e-mail you relied on for your analysis?

22   A   Yes. We can see that in this e-mail the person response,

23   "That worked. Thanks for jumping in at short notice."

24   And then we also see what we saw before, "this is a

25   potential problem for all new clients," but clearly we see,

1   "That worked," so we know it was tested in Johnson Controls

2   and that it worked as expected.

3   Q   We heard from Mr. Benge, I guess it was yesterday, that

4   while this update or bug fix was eventually delivered to

5   clients, including City of Eugene, it wasn't delivered

6   immediately. Do you recall that?

7   A   Yes.

8   Q   And does that affect your opinion whether this was

9   cross-use?

10   A   No, it doesn't. At the time that the Rimini engineers

11   were implementing the fix in the City of Eugene's environment,

12   it was because they were potentially affected by the bug and

13   so they were working in the City of Eugene's environment for

14   City of Eugene.

15   Q   I want to ask you, so under Ms. Frederiksen-Cross'

16   theories about cross-use, if Rimini had solved this issue,

17   let's say for Johnson Controls, and determined that typing in

18   B999 into the field fixes the issue, and let's say we have

19   another client that shows up and is having another problem

20   with their W2 print form, is there any way that Rimini can fix

21   that problem for the second client?

22   A   They could type B999999.99 in there. I don't know how

23   they would do that without using the knowledge that they'd

24   gained. They would have to reuse their knowledge and

25   know-how.

-1003-

1   Q   And would that be cross-use under Ms. Frederiksen-Cross'

2   theories?

3   A   It would appear to be.

4   Q   Let's move on to the next issue. Let's talk about Issue

5   4 which is rsi940a.sqr, and it's the update HCM200049.

6   A   Yes.

7   Q   And, Professor, can you just tell us -- remind us, I know

8   we've been hearing about these updates for four days, but

9   remind us which update this is.

10   A   This is an update for the federal tax form 940A that had

11   some misalignment issues.

12   We can see in this diagram what those misalignment

13   issues are, that those Xs that we see over there in the middle

14   of the page for West Virginia, New York, and Puerto Rico, I

15   guess, I can't tell for sure, that the Xs aren't where they're

16   supposed to be. They're supposed to be in the middle of the

17   box.

18   So there was a misalignment issue for Schedule 940A

19   of the IRS.

20   Q   All right. And what was Ms. Frederiksen-Cross'

21   allegation in respect to this update?

22   A   That Don Sheffield makes a change to rsi940, says he

23   completed it in the City of Eugene, and sent the fix to all US

24   clients, and that this was thus cross-use.

25   Q   Do you agree with Ms. Frederiksen-Cross on this update?

1   A   No, I do not.

2   Q   Why not?

3   A   Once again, the update rsi940a is completely Rimini work

4   product.   There is no Oracle copyrighted expression in

5   rsi940a.

6   And many clients, including the City of Eugene, were

7   slated to receive this update.   When the testing was done in

8   the City of Eugene's environment, it was for the City of

9   Eugene because they would be affected potentially by a change

10 to Form 940.

11   Q   We went through the file at issue in this update with

12 Mr. Benge yesterday, but can you remind us, what are the files

13 at issue for this update?

14   A   There are three files, I think, that are described on

15 this page.   There is the Schedule A 940, that's just a GIF or

16 image file.

17   There's the instructions for using Schedule A, and

18 then there's the Rimini written file, rsi940a.sqr.   We can see

19 that there on the left.

20   That's a Rimini-developed file.   We see the logs at

21 the top that indicate it's a Rimini-developed file.

22   Q   Did you review these files as part of your analysis?

23   A   Yes.

24   Q   Do any of these files contain any Oracle copyrighted

25 material in your opinion?

1   A   They do not.

2   Q   What's your understanding of which company wrote the

3   rsi940a file?

4   A   As I mentioned, rsi940a is written by Rimini developers.

5   We see that because it says -- it's named rsi940a, and the

6   developers have included a log at the top that indicates

7   they've made modifications over several years.

8   Q   Why does it matter to your cross-use opinions that these

9   files do not contain any Oracle copyrighted material?

10   A   Because in my definition of cross-use that we discussed

11   earlier, the first prong, as it were, is that there must be a

12   reproduction of Oracle software. This is not Oracle software.

13   Q   All right. The second point on your introductory slide

14   was that Ms. Frederiksen-Cross ignored that many clients were

15   slated to receive this update. Can you just explain that.

16   A   Yes. Similar to what we had before, there's some e-mails

17   that described that many clients were likely to need this

18   update and thus would get it.

19   MR. McCRACKEN: Let's look at Oracle Exhibit 21.

20   Let's look at page 6.

21   BY MR. McCRACKEN:

22   Q   And, Professor, what, on this page, if anything, was

23   significant to your opinion that multiple clients required

24   this update?

25   A   The last sentence of this e-mail says, "Are SPH and SME,"

1   that's Spherion and Smead,

2   "Are Spherion and Smead getting this update

3   earlier than the rest of the clients?"

4   And the "rest of the clients" would be the other

5   ones that were going to get the update.

6   Q   And let me back up. Is it logical to you that more than

7   a couple clients would need this update?

8   A   Yes. As I mentioned, this a federal tax form, 940A, so

9   potentially every US client of Rimini Street would need this

10 update.

11 Q   All right. Let's go to page 2 of this document.

12   And, Professor, this is the document, this is the

13 e-mail chain that describes the development of this update; is

14 that right?

15 A   Yes, that's correct.

16 Q   We've seen this a lot --

17 A   We have.

18 Q   -- throughout court?

19 A   Yes.

20 Q   And so, Professor, what, if anything, on page 2 is

21 relevant to your opinions?

22 A   The second sentence -- the end of the first sentence is

23 perhaps the most relevant. It says,

24   "I have completed the testing in COEX, and

25   I've rolled the two GIF files and the modified

—1007—

1   version of the rsi940a.sqr program out to all US

2   clients,"

3   and then excluding those that have gotten another Oracle

4   update.

5   "All US clients," that's many clients that would be

6   potentially affected by this change.

7   Q   Is there any reason a Rimini engineer would use Transfer

8   Files to transfer these files to US clients unless they needed

9   it?

10   A   No.   You would transfer these files to all the US clients

11   who would be -- potentially need it, as you indicated, because

12   it's a federal tax form.

13   Q   And is City of Eugene one of the US clients with version

14   less than 2018-B?

15   A   Yes, it is.

16   Q   What else is relevant to your analysis from this e-mail?

17   A   It says,

18   "I could use CreateUpdateFolders for all US

19   clients that will ultimately get this update."

20   You've heard testimony about

21   CreateUpdateFolders, that's a Rimini tool that helps ensure

22   that these fix -- the files in this case are sent to the US

23   clients so that they it can be tested in their environment.

24   Q   And why is it meaningful that Don Sheffield says "all US

25   clients that will ultimately get this update"?

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1   A   Because it's an indication that the Rimini engineers

2   thought at this time that all of the Rimini clients in the

3   US -- again excluding the ones that had gotten Oracle update

4   2018-B -- were going to receive this update.

5   Q   In this e-mail Mr. Sheffield indicates that he rolled out

6   the two GIF files and the modified version of rsi940a.sqr to

7   these "all US clients" with certain versions.

8   Does sending that file copy any Oracle code in your

9   opinion?

10 A   No. As I mentioned, and we've already discussed, rsi940a

11 is a Rimini-written file on Rimini systems. It does not

12 incorporate any Oracle expression at all, and the other files

13 are GIF files created from IRS forms. So none of those files

14 have Oracle protected expression in them.

15   MR. McCRACKEN: All right. Mr. Jay, can we take

16 down the exhibit, please, and go back to the demonstratives.

17 BY MR. McCRACKEN:

18 Q   And, Professor, using this demonstrative DDX-557, can you

19 explain how Rimini developed this update for its multiple

20 clients.

21 A   Yes. In the bottom we see that Rimini Street has the

22 rsi940a.sqr in the IRS forms.

23   Now, the City of Eugene had an older version of

24 rsi940a, and because they were a client who would likely need

25 this update, Rimini engineers went into the City of Eugene's

-1009-

1   environment, made changes to the rsi940a to make sure that the

2   forms were printed properly, tested them in the City of

3   Eugene, again, for the City of Eugene because they were one of

4   the US clients potentially affected by this bug.

5   And once they had rsi940a working as they wanted,

6   they then had on their system -- again, this rsi940a with no

7   Oracle protected expression, no Oracle copyrighted expression

8   at all in it -- that's on the Rimini Street servers, and then

9   they were able to send it via their tools to their clients to

10   test it in their environments.

11   Q   Let me break that down. So after -- you said that after

12   -- or strike that.

13   You said that they changed the code in the Rimini

14   file on the City of Eugene's system. What's the next step in

15   the process after that?

16   A   Well, they would write a document to describe how to make

17   these changes because they document all the work they do, and

18   they would make the change in their code on the Rimini Street

19   server.

20   Q   Okay. So they make the change -- so they make the change

21   in City of Eugene, it works, and then they make the change on

22   the Rimini Street server to document their solution?

23   A   Yes, that's correct.

24   Q   And then how do the other clients receive the update?

25   How is it developed for them?

—1010—

1   A   Well, Rimini Street sends it to them using their tools,

2   for example, Transfer Files or Transfer Tools and other tools

3   that we saw in the e-mail, CreateUpdateFolders, those are sent

4   to the clients, Spherion and Smead.

5   Again, those files are Rimini intellectual property,

6   or from the IRS, and then they are tested in those

7   environments.

8   First they are tested in one client's environment,

9   assuming that it's only one engineer. There were multiple

10 engineers. I guess they could be testing it individually.

11   But it's tested in Spherion to see that it works in

12 Spherion. It's tested in Smead to see that it works in Smead.

13   And, again, this is the Rimini-written solution

14 that's being used in each client's environment to support that

15 client.

16   Q   Now, Professor, did the sending of the rsi940a.sqr file

17 and the IRS forms to Spherion and Smead copy any Oracle

18 protected works?

19   A   No, sending it did not because, as I mentioned, these are

20 Rimini intellectual property, Rimini-developed solutions on

21 the Rimini system. So sending them did not copy any Oracle

22 expression.

23   Q   Is it the case that the only place where PeopleSoft

24 software was used in this diagram was in testing the solution

25 for the City of Eugene?

-1011-

1   A   In the City of Eugene, when that update -- when the fix

2   was being developed, yes, the City of Eugene's environment was

3   used for the City of Eugene.

4   Q   Is that cross-use in your opinion?

5   A   No, it was not, because it was used for the City of

6   Eugene.

7   Q   I think we heard testimony over the last week that this

8   update was eventually not delivered to the City of Eugene. Do

9   you recall that?

10 A   Yes, I do.

11 Q   It had to do with a thing about the Virgin Islands. Do

12 you remember that?

13 A   Yes, that's my understanding.

14 Q   Does that affect your opinion as to whether this testing

15 in City of Eugene's environment was for the City of Eugene?

16 A   It doesn't change my opinion. It was for the City of

17 Eugene because at the time that the testing and development

18 was occurring the City of Eugene was potentially affected by

19 this bug, and so that development was for the City of Eugene.

20   What happened later doesn't affect that. During the

21 development process it was for the City of Eugene.

22 Q   Did you prepare a timeline illustrating that opinion?

23 A   Yes. I think we can see that.

24 Q   And just --

25 A   So --

-1012-

1   Q   Briefly explain to us how this affects your opinion.

2   A   These updates for the City of Eugene were created on

3   January 25th. We saw in the e-mail that on January 25th they

4   were sent to clients that would ultimately get the updates,

5   and then only later did a business analyst determine that not

6   everybody would get the update.

7   But this illustrates my point that at the time the

8   engineer who is working in the City of Eugene's environment,

9   it was for the City of Eugene. It was only later that it was

10   determined that not everyone would actually get the

11   development -- the update.

12   Q   Did you hear Ms. Frederiksen-Cross claim that Rimini was

13   using City of Eugene's environment for generic environment?

14   A   Yes, I heard that.

15   Q   Do you agree with her?

16   A   No, I do not.

17   Q   Why not?

18   A   Because each occurrence that we've heard here for the

19   City of Eugene was to create, test, develop an update for the

20   City of Eugene because they were affected by the issues in

21   that update.

22   Q   Let's move to the next issue, which is Issue 6, the 1099

23   update for Easter Seals, And --

24   THE COURT: Let me interrupt you here. We need

25   to take an afternoon recess, and most of these sessions are

1   taking 10 or 15 minutes. Let's go ahead and take our

2   afternoon break at this time.

3   We'll reconvene at 3:30.

4   MR. McCRACKEN: Thank you.

5   (A recess was taken.)

6   THE COURT: Have a seat, please.

7   The record will show we are reconvened after our

8   afternoon recess.

9   Mr. McCracken, you're welcome to go forward.

10   MR. McCRACKEN: Thank you.

11   And good afternoon, Professor Astrachan.

12   THE WITNESS: Good afternoon.

13   BY MR. McCRACKEN:

14   Q   We're going to be moving on to issue number 6 which is

15   the 1099 update for Easter Seals, and I believe the contention

16   by Ms. Frederiksen-Cross is that this is a derivative work.

17   Is that your understanding?

18   A   That is my understanding.

19   Q   Can you just describe for us what the issue is.

20   A   Ms. Frederiksen-Cross says that because this update was

21   specifically tailored to operate only with and modify Oracle's

22   PeopleSoft software, that this update comprises a derivative

23   work.

24   Q   Do you agree with Ms. Frederiksen-Cross?

25   A   No, I disagree.

-1014-

1   Q   Now, in this demonstrative, DDX-562, what are we looking

2   at, Professor?

3   A   We're looking at an e-mail with a diagram of the zipped

4   file RSI8F07_EAS_GA.zip, that is the Easter Seals update.

5   Q   And that's the alleged derivative work?

6   A   That's correct.

7   Q   And this is based on DTX-610.

8   Professor, did you analyze the files in this alleged

9   derivative work?

10 A   Yes, I looked at all the files.

11 Q   And what are the different types of files in the bundle?

12 A   I've grouped them here into four areas.

13   The first area are the .pdfs. So the .pdfs are

14 client documentation explaining this bundle and instructions

15 for installing the bundle. This is all Rimini written and it

16 includes no alleged Oracle protected expression.

17 Q   And what's the next set of documents in the bundle?

18 A   These are the Data Mover scripts. That's why they have

19 the .dms suffix.

20   Again, these are Rimini-written scripts to update

21 vendor tables in a PeopleSoft environment. There's no Oracle

22 copyrighted material in them.

23 Q   Do you believe the DMS scripts are derivative works?

24 A   No, they're not.

25 Q   What's the next type of file?

-1015-

1   A   These are the GIF files that deal with the 1099-I and

2   1099-M files that we've heard about, and then instructions for

3   those forms.

4   They are graphic interchange format GIF files that

5   are created from the IRS materials for these forms, and

6   there's no protected expression, no Oracle expression.

7   They're from the IRS.

8   Q   And then, Professor, the last category of documents in

9   the bundle are these two SQR files, rsi1099I.sqr and

10   rsi1099M.sqr. Can you explain what those are.

11   A   Those are the codes to print the corresponding IRS form,

12   1099-I or 1099-M respectively, and there's no Oracle

13   copyrighted material in them. They are not derivative works.

14   Q   Which of these files, out of the ones you've just

15   described, are the ones that Ms. Frederiksen-Cross contends

16   are derivative works?

17   A   These .sqr files.

18   Q   Have you reviewed the .sqr files?

19   A   Yes, I have.

20   Q   Did you see any evidence that they incorporate any Oracle

21   code?

22   A   No, I've seen no such evidence that they incorporate any

23   Oracle code, nor have I heard Ms. Frederiksen-Cross contend

24   that they incorporate any Oracle code.

25   Q   Did she contend that they incorporate any other kind of

1   Oracle copyrighted expression?

2   A   No, she did not.

3   Q   Did she identify, you know, what that copyrighted

4   expression would be?

5   A   There was no copyrighted expression that she identified

6   and so there is none. There's no copyrighted or protected

7   expression that I've seen, nor that she opined about in these

8   files.

9   Q   Why is it your opinion, Professor, that these two SQR

10   files are not derivative works?

11   A   They were written by Rimini developers on Rimini systems.

12   No Oracle tools or code was used in preparing them. They're

13   entirely Rimini work product.

14   Q   Do those files, in your opinion, substantially

15   incorporate any protected Oracle material?

16   A   No. As I mentioned, they do not incorporate any Oracle

17   material, let alone protected material.

18   Q   What were the reasons that Ms. Frederiksen-Cross gave for

19   why these SQR files are supposedly derivative works, even if

20   they don't have any Oracle code in them?

21   A   As I understand it, she contends that because they are

22   designed to only work in a PeopleSoft environment and be part

23   of that PeopleSoft environment, that that somehow makes them

24   derivative works because they are written to only work in a

25   PeopleSoft environment.

1   Q   Do you agree with that?

2   A   No, that makes no sense to me. I don't understand that.

3   It doesn't work with my understanding of files and programs at

4   all.

5   Q   Are there examples of software in your experience that

6   interoperate with other software?

7   A   Well, I don't think this is about interoperability per

8   se, this is about -- I have written, myself, hundreds of

9   programs designed to work in a Windows environment. They will

10   only work in a Windows environment. I write them to only work

11   in a Windows environment.

12   That doesn't make them derivative works of Windows,

13   nor do the game programmers that create games that only run in

14   a Windows environment and, while they're running, they're

15   running in the Windows environment, they are not derivative

16   works either.

17   Q   I think Ms. Frederiksen-Cross also opined that these

18   files -- they extend or modify PeopleSoft. Is that your

19   understanding?

20   A   That is my understanding, yes.

21   Q   And what's your opinion about that?

22   A   Well, these files are certainly included as part of

23   PeopleSoft when they're running because they're printing 1099

24   forms in a PeopleSoft environment. So when they're running,

25   they are running in a PeopleSoft environment for, say, one of

—1018—

1   Rimini's clients.

2   And when they are running, that PeopleSoft

3   environment that's been modified to use the 1099 forms for

4   Rimini, that's a derivative work because it's PeopleSoft

5   running in a client's environment, but it's running only in

6   the client's environment, and it's the PeopleSoft that is the

7   derivative work, not the Rimini files.

8   Q   I think you have a demonstrative, Professor. We're

9   looking at DDX-568. Can you explain that concept with

10   reference to your demonstrative.

11   A   Certainly. The 1099.sqr files, both I and M, have been

12   developed by Rimini Street over several years. We see that

13   when we look at these files that they have a log for each year

14   that a new 1099 comes out.

15   So these are a Rimini-developed program. Each of

16   them is a Rimini developed program. There's no contention

17   that they incorporate any protected expression at all so they

18   are not a derivative work.

19   Now, when they are running in a client's environment

20   such as Easter Seals, when they're running, that entire

21   environment is a PeopleSoft environment, and it's a PeopleSoft

22   environment in which these 1099.sqr files are used to print

23   1099 forms.

24   So they are working as a whole in the client

25   environment for that client. They're compliant with the

-1019-

1   injunction.

2   Q   I was going to ask you, does it violate the injunction to

3   have a derivative work in a client's environment for that

4   client?

5   A   No, it does not.

6   Q   Do the rsi1099m.sqr and 1099i.sqr files standing alone on

7   Rimini systems modified any PeopleSoft environment?

8   A   No, they do not. They can't because they're not running.

9   They contain, as I mention, no expression, no protected Oracle

10   expression, and they can't run because there are no PeopleSoft

11   environments on Rimini systems.

12   Q   Do you recall also that Ms. Frederiksen-Cross gave

13   testimony about something called #include?

14   A   Yes, I do.

15   MR. McCRACKEN: And, Mr. Jay, can we pull up

16   DTX-619, which is the rsi1099i.sqr file, and I think we want

17   page 2. Maybe --

18   A   No, we see this here.

19   Q   Okay. So, Professor, what's the #include on this page?

20   A   Well, this #include is part of the program, and in this

21   program we see many lines of code.

22   The #include is actually a directive to the

23   pre-compiler to do something when this code is on the client's

24   PeopleSoft environment.

25   Q   Hold on. Let's slow down because I think this is pretty

-1020-

1   technical.

2   So when we're talking about #include, we're talking

3   about the words -- I mean, like a hashtag or a pound symbol

4   and the word include; is that right?

5   A   That's correct.

6   Q   It's -- well, continue. What is the function of a

7   #include symbol or function in computer programming?

8   A   So this directive says #include 'setenv.sqc,' and just as

9   it's part of this program on the Rimini system, it does

10   nothing because, as I mentioned, this program cannot run

11   except in a PeopleSoft environment. So here it's just

12   characters in the program.

13   Now, when it's executed, when it's run, then

14   something happens with the #include, and I believe

15   Ms. Frederiksen-Cross had a diagram of what happens when a

16   program with a #include is run on a client's PeopleSoft

17   environment.

18   MR. McCRACKEN: And we can look at that.

19   Can you take this down, Mr. Jay. Thank you.

20   BY MR. McCRACKEN:

21   Q   Is this the diagram?

22   A   This is the diagram, and the source code would be this

23   1099i.sqc with what we call a #include directive.

24   And what that does is it says, okay, this is now

25   running in an Oracle PeopleSoft environment, certain commands,

-1021-

1   functions, and variables need to be included in this program

2   to run, and that's why it says #include.

3   In order for almost any program to run in a

4   PeopleSoft environment, this would need to be included.

5   And so it says to the pre-compile, as you can see

6   here, which is just part of the process of turning source

7   code, this human readable code, into the code that runs.

8   Part of that process is please include the necessary

9   parts to run in a PeopleSoft environment, and so they're

10   literally included in the stream characters that results in

11   the object code. So in that sense, they're copied into that

12   stream of characters.

13   The stream of characters is the source code, and now

14   that includes some PeopleSoft code because it's running in the

15   client's PeopleSoft environment to create a PeopleSoft

16   program.

17   Q   So I hear you say that when the #include is executed it's

18   going to include some PeopleSoft code. Did I get that right?

19   A   Yes, that's correct.

20   Q   Where does that happen?

21   A   This is running, as it says at the bottom of this slide,

22   on the client's environment.

23   So in the client's environment where we are running

24   PeopleSoft, this is included. As is the case for almost every

25   PeopleSoft program, it will include setenv.sqc, what we saw

1   earlier.

2   Q   So let's go back to this diagram on DDX-568.

3   When the rsi files, the .sqrs on Rimini's system,

4   are just sitting there with #include in them, is that copying

5   any Oracle code at that point?

6   A   No, it can't copy any Oracle code, it's not running, it's

7   not being compiled. So no Oracle code is included in there.

8   Q   So at what point is the #include going to take effect?

9   A   When the program is executed, part of that compilation

10   process that results in an executable, and that's all on the

11   client's machine in the client's environment.

12   Q   So that would occur in the top box on this demonstrative

13   on DDX-568.

14   A   That's correct. In the box labeled Easter Seals

15   Production Environment, that's where the execution of this

16   Rimini code results in, as it says, a derivative work, which

17   is the client's modified PeopleSoft environment. The

18   inclusion happens there.

19   Q   When the code is run and the inclusion happens, which

20   client's PeopleSoft software would be included and copied?

21   A   In this case it would be Easter Seals since it's running

22   in the Easter Seals environment.

23   Q   And who would that -- which client would that inclusion

24   support?

25   A   It would support Easter Seals because the program is

—1023—

1   running on the Easter Seals environment.

2   Q   Are #includes something that's specific to PeopleSoft?

3   A   No, #includes are part of many languages including, for

4   example, this C and C++.

5   And I mentioned that I had, myself, written hundreds

6   programs that run on Windows environments, and every one of

7   them has a #include to incorporate Windows specific

8   functionality as part of creating an executable, all of them.

9   Q   So you, yourself, use #include.

10   A   Yes, very often.

11   Q   Do you teach your students to use #include?

12   A   When they're writing C and C++ programs, all of my

13   students use #include.

14   Q   Are there times when you have to use #include?

15   A   Almost every program, even the simplest program that

16   students write which, by convention, is a one-line program

17   that prints "hello, world" on the screen, that's what's

18   typically viewed as the first program in any language.

19   And in C, for that program to run, it's going to say

20   #include stdio.h, and when it's run that's part of any C

21   program that prints. So even the simplest C program that we

22   teach our students has a #include.

23   Q   Professor, do you think all the programs you've written

24   with #include are derivative works of some other software?

25   A   No, I do not.

-1024-

1   Q   What would the consequences to your industry be if that

2   were the case?

3   A   As far as I can see --

4   MR. ISAACSON: Objection, foundation.

5   THE COURT: I'll allow him to answer.

6   THE WITNESS: As I mentioned, nearly every C or

7   C++ program has a #include in it, and, as I see it, that would

8   mean every program that's designed to run on a Windows

9   environment would then be a derivative work of Windows.

10   Every program that's designed to run on an Apple

11   computer where you also have #includes would be then a

12   derivative work of the Apple operating system.

13   I don't see how there wouldn't be

14   derivative works always in this case. That makes no

15   sense to me whatsoever.

16   BY MR. McCRACKEN:

17   Q   Are the RSI .sqr files created using OracleTools?

18   A   No, they are not.

19   Q   Ms. Frederiksen-Cross seemed to indicate that they may

20   use OracleTools or use PeopleTools. Do you recall that?

21   A   Yes. As I understand it, perhaps as part of their

22   execution in a client's environment, in this case the Easter

23   Seals environment, tools might be used as part of that

24   printing process, for example, but that would only happen in

25   the client's environment for the client.

—1025—

1   Q   Do the files standing alone on Rimini system use any

2   OracleTools?

3   A   They do not.

4   Q   And, Professor, can you just summarize your conclusions

5   with respect to the Easter Seals issue.

6   A   These are Rimini-written files, and, as I mentioned,

7   they're revised every year to make sure that they work with

8   the new 1099 forms.

9   Each of these files, 1099-I and 1099-M, is not a

10   derivative work. None them incorporate any Oracle copyrighted

11   material.

12   It is not cross-use to work in a client's

13   environment for the benefit of that client so that they can

14   print 1099 forms.

15   Q   All right. Professor, let's move on to the last issue,

16   which is issue number 10, which has to do with a file called

17   risqtrtx.sqr, which we've being calling rsi quarter tax.

18   A   Yes, I remember that.

19   Q   And can you just give us an overview of what the issue

20   and dispute is here.

21   A   As I understand it, Ms. Frederiksen-Cross calls this a

22   one code for all solution and that it is distributed to new

23   Rimini customers.

24   Q   Did Ms. Frederiksen-Cross, in her testimony, identify any

25   reproduction of Oracle software that she claimed was the

-1026-

1   cross-use in this update?

2   A   Not that I recall, no.

3   Q   Did she identify any particular client's environment that

4   she claims was cross-use as part of this update?

5   A   No, not that I recall.

6   Q   Do you agree with Ms. Frederiksen-Cross's opinion that

7   the use of rsi quarter tax is cross-use?

8   A   No, I do not.

9   Q   Why not?

10   A   This is a Rimini-written file. There is no reproduction

11   of Oracle code.

12   Each time this is developed and tested in a client's

13   environment, it is in fact developed and tested in the

14   client's environment. In this case that is Rockefeller and

15   Home Shopping Network. It is tested in both client's

16   environment for the client.

17   Q   All right. Let's go through some of these. I mean, I

18   think I understand -- you've already opined on the first one,

19   but can you explain your view on the second bullet here.

20   A   Any reproduction of Oracle code would be the new modified

21   PeopleSoft environment with this SQR file in it. Any time

22   that happens it's in a client's environment for the benefit of

23   that client.

24   Q   And then you say here that the update was implemented and

25   tested in RKF, I guess that's Rockefeller, and HSP, that's

-1027-

1   Home Shopping Network's respective environments. What's your

2   basis for that opinion?

3   A   We saw a lot of both testimony and e-mail about how it

4   was developed and tested.

5   This diagram shows what Mr. Benge described as the

6   development of this update for Home Shopping Network, and it

7   consists of many steps.

8   Q   This was the update where I examined Mr. Benge and we

9   walked through the 13 steps in the Dev instruction?

10   A   That's correct.

11   Q   Can you just describe how this development took place.

12   A   Briefly. There's a document that describes what happens,

13   and the 13 steps in the Dev instruction allow modification in

14   the client's environment, and those consist of sending this

15   risqtrtx.sqr file, which is Rimini work product, that's sent

16   to a client's development environment.

17   There it's integrated. That may involve further

18   development. It will involve unit testing and debugging. We

19   heard about that today, and then after that, as part of the

20   delivery, it will undergo QA testing.

21   Q   And in what environments do these activities occur?

22   A   They all happen in the client's environment for the

23   benefit of that client. So in this case our diagram says it's

24   in the Home Shopping Network environment, but the same

25   sequence of steps would happen, for example, in the

-1028-

1   Rockefeller environment.

2   Q   Did you see any evidence that this update was tested for

3   Home Shopping Network and Rockefeller?

4   A   Yes.   I've seen both e-mails and then today we saw that

5   as well.

6   Q   What are you referring to?

7   A   I'm referring to the testimony via zoom we had earlier

8   today from Ms. Davenport.

9   MR. McCRACKEN: Can we pull up DTX-1004, please.

10   And let's go to page 2.

11   BY MR. McCRACKEN:

12   Q   Did this document inform your opinions about whether this

13   update had been tested?

14   A   Yes.   We heard that this is an environment spreadsheet,

15   and we can see that the last two entries in the spreadsheet

16   for Home Shopping Network and Rockefeller Group have a status

17   of completed for both the developer and for testing.

18   So we know that they were developed and tested in

19   each case in the client's environment for that client.

20   Q   All right.   So based on your analysis of this update,

21   what are your conclusions with respect to HCM200105?   And I

22   think we have a slide on the conclusions.

23   A   As I stated at the outset, there is no evidence that this

24   rsi quarter tax contains Oracle copyrighted material, nor has

25   there been any such assertion.

-1029-

1   There's no reproduction of one client's Oracle

2   software for another client. Each time an environment is

3   used, it's for the benefit of that client.

4   These updates were developed in each client's

5   environment, so once for Rockefeller and once for Home

6   Shopping Network, and then each update was tested in the

7   client's QA environment for Rockefeller and Home Shopping

8   Network, thus there is no cross-use.

9   Q   All right. Last topic, Professor.

10   Ms. Frederiksen-Cross testified that Rimini's

11   recordkeeping was poor. Do you recall that?

12   A   Yes, I do.

13   Q   What did you think of that allegation?

14   A   I don't think it's true.

15   Q   Why not?

16   A   Rimini has extensive documentation, and we've seen

17   evidence of it in this hearing as well as throughout the works

18   I've studied.

19   For example, we've seen that Jira is used to track

20   all client updates that Rimini does. Jira is standard

21   industry software used by tens or hundreds of thousands of

22   clients, depending on how much their website I would like to

23   believe, but I've known other groups that use Jira.

24   Spira is another industry standard software suite

25   that's used for tracking, testing, and quality assurance.

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1   Previous to using Jira and Spira, as I understand

2   it, Rimini used DevTrack, another standard tool.

3   All these tools contain extensive logs and

4   information that allows Rimini to do what they're hired to do.

5   We also have seen examples of SalesForce which is

6   another industry standard tool that Rimini uses to interact

7   with its clients.

8   We've seen RiminiTools that keep extensive logs.

9   Every time Transfer Files happens there's a log. We saw today

10 the logs for Create Update and Apply Update.

11   Extensive logs are created throughout the process

12 that Rimini uses to support its clients. So I've seen

13 evidence of many good recordkeeping tools and procedures.

14   Q   Ms. Frederiksen-Cross criticized Rimini for not having

15 what she called a version control system. Is that your

16 understanding?

17   A   Yes, I remember that.

18   Q   Do you think that was a fair criticism?

19   A   No, I don't think that's a fair criticism because Rimini

20 is not in the business of being a software developer. They're

21 a client support organization.

22   So in a standard software development environment we

23 might expect to some version control system, but, in a support

24 company such as Rimini Street, that wouldn't necessarily be

25 expected so I don't see that as an issue here.

-1031-

1   Q   Would it even be possible for Rimini to keep different

2   versions of Oracle software on its systems?

3   A   Well, Rimini doesn't keep any versions of Oracle software

4   on its system, and in each client's case, they keep a version

5   in the client's Dev and QA environments that's specific to

6   that client, and there are often differences.

7   So the versioning is done in the client's

8   environment for that client. Rimini wouldn't be keeping any

9   version control of that because it's not in their systems.

10   MR. McCRACKEN: Thank you, Professor. I have no

11   more questions on direct.

12   THE COURT: Okay. Cross-examination,

13   Mr. Isaacson.

14   MR. ISAACSON: Yes.

15   Good afternoon, Professor. My name is Bill

16   Isaacson.

17   THE WITNESS: Good afternoon.

18   CROSS-EXAMINATION

19   BY MR. ISAACSON:

20   Q   Now, as I understand it, you were engaged by Rimini

21   Street to evaluate and analyze Ms. Frederiksen-Cross's report.

22   A   Yes, that's correct.

23   Q   And you were not asked to do an investigation of your own

24   and reach an opinion on whether Rimini Street has violated the

25   injunction; is that correct?

—1032—

1   A   That's correct.

2   Q   The technical analysis that you've done in this case of

3   Rimini's processes was based upon what Rimini's engineers and

4   Rimini documentation told you; is that correct?

5   A   Well, as I mentioned, I have read all the exhibits and

6   information that Ms. Frederiksen-Cross includes in her report

7   so I've used that along with what Rimini has provided me.

8   Q   Right. So your technical analysis of Rimini's processes

9   include what Rimini engineers told you, what Rimini

10 documentation told you, and what you reviewed from the

11 exhibits of the Frederiksen-Cross report.

12   A   I think that's reasonable.

13   Q   And in terms of what Rimini engineers told you, or

14 anybody at Rimini told you, you did not undertake any factual

15 investigation to verify the accuracy of their representations

16 about their processes; is that correct?

17   A   I worked to make sure that the explanations and e-mail

18 and logs that I read were consistent.

19   Q   That wasn't my question.

20   You did not undertake any factual investigation to

21 verify the accuracy of any Rimini representation that was made

22 to you, correct?

23   A   I did not take specific actions for that, correct.

24   Q   And you personally did not do anything to confirm whether

25 any Rimini developer copied Oracle code, correct?

1   A   I looked at all the exhibits and logs I was given, and I

2   saw that except for the -- I didn't see any examples where

3   code was copied, so I'm not sure what else I could have done.

4   Q   Well, you -- are you saying that if you wanted to know

5   whether a Rimini developer copied Oracle code, all you think

6   you could do was evaluate the Frederiksen-Cross report?

7   A   No. As I mentioned, I looked at the log files of all the

8   different tools that a Rimini engineer uses. I did not

9   interview all of the Rimini engineers and ask them that

10   question.

11   Q   In fact you personally did not do anything that -- to

12   confirm that no Rimini developer copied Oracle code to its

13   systems since the injunction went into effect, isn't that

14   correct?

15   A   In looking at the log files that were provided to me,

16   which, as I understand it, were all the log files, I saw no

17   such evidence.

18   Q   All right. But all you did was confine yourself to the

19   materials in the Frederiksen-Cross, and other than that, you

20   did not personally do anything to confirm that a Rimini

21   developer copied Oracle code to its system since the

22   injunction went into effect.

23   I have that correct, don't I?

24   A   I did look at the log files, and these are extensive log

25   files, but I didn't look at things outside of the materials

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1   that I have already spoken of that I used in coming to my

2   opinions.

3   Q   As part of your work in this case, you were allowed

4   access to speak to anyone at Rimini that you wanted to,

5   correct?

6   A   I don't know that that was the case.

7   Q   Well, let me understand that. If you asked to talk to

8   someone at Rimini, were you granted permission to do so?

9   A   I -- when I spoke with engineers, that happened. I

10   didn't, for example, ask to speak with -- we've seen now QA

11   engineers now in Bangalore and other parts of the world. I

12   don't know if that would have been allowed or not.

13   Q   So you interviewed certain people, and you didn't

14   interview others. Those were your decisions. Every person

15   that you requested to interview you were told yes.

16   A   I think that's fair.

17   Q   Okay. And it was never suggested to you that in doing

18   your work that if you needed to talk to someone at Rimini the

19   answer might be no.

20   A   That wasn't suggested to me.

21   Q   All right. And it would be fair to say that it was your

22   assumption in doing your work that you are going to be allowed

23   reasonable access to speak to anyone at Rimini that you wanted

24   to.

25   A   I think that's reasonable.

-1035-

1   Q   Now, after the injunction the only interview that you did

2   with any Rimini personnel was with a gentleman named James

3   Butler.

4   A   I believe that's a reference in one of my reports, yes.

5   Q   And you understood that he was an associate general

6   counsel at Rimini.

7   A   I don't remember his title.

8   Q   Do you know anything about his background?

9   A   Not that I can recall.

10   Q   So it was your choice, as I understand it, not to speak

11   to any Rimini personnel beyond Mr. Butler after the

12   injunction.

13   A   Yes.

14   Q   And by the time of your reports and deposition in this

15   case, you had not personally observed Rimini's software

16   development team performing any testing of any updates. Do I

17   have that correct?

18   A   I did not see Rimini engineers working in development

19   environment, that's correct.

20   Q   You had not observed a Rimini engineer logging into a

21   client environment to update or fix files before your reports

22   and depositions.

23   A   I may have seen someone log into a system, I don't

24   recall. But that would have been logging in, not going

25   through the entire development process.

1   Q   And for your reports and depositions -- well -- well,

2   strike that.

3   Let me just ask you, you don't know whether Rimini

4   has ever developed a PeopleSoft or a JD Edwards update for one

5   Rimini client that was provided only to that client; is that

6   right?

7   A   As I stated earlier, I was asked to respond to the

8   allegations of Ms. Frederiksen-Cross, and as I have talked

9   about today, in each one of those cases I have described how

10   the updates were made for that client.

11   Q   To be clear, you are not here to answer the question

12   before the Court as to -- for example, as to whether -- are

13   you giving an opinion today as to whether the injunction has

14   been violated?

15   A   In my responses I have indicated that in what

16   Ms. Frederiksen-Cross has opined that the injunction hasn't

17   been invalidated, that we're in compliance based on her

18   allegations.

19   Q   Are you giving the opinion that in every respect the

20   injunction has not been violated?

21   A   Only in responding to Ms. Frederiksen-Cross.

22   Q   With respect -- are you giving the opinion that -- well,

23   I'll move on.

24   You're not aware in terms of a -- since the

25   injunction you are not aware any material changes to Rimini's

-1037-

1   JD Edwards support processes, correct?

2   A   That's reasonable, yes.

3   Q   Now, in terms of your testimony concerning derivative

4   works, you consider the issue of whether a file is a

5   derivative work to be a legal conclusion, correct?

6   A   Basically it's my understanding that that is -- that

7   copyright issues are legal concerns, yes.

8   Q   Right. You have no formal training in copyright law.

9   A   I am not a lawyer, that is correct.

10   Q   And I think it was made clear on your direct you're not

11   trying to give legal opinions.

12   A   That is correct.

13   Q   All right. Now, you were asked in this case by Rimini's

14   counsel to assume that to be a derivative work a work must

15   substantially incorporate protected material from a

16   preexisting work; is that right?

17   A   That's consistent with other definitions that I've been

18   given in other cases as well, but, yes, that's correct.

19   Q   And you agree that even under the definition of a

20   derivative work that you were asked to assume, a work doesn't

21   need to literally contain Oracle code to be a derivative work.

22   A   I think what you're saying is consistent with my -- with

23   the definition I used, but it must be substantially similar

24   to, as I understand it.

25   Q   All right. Now, with respect to what we have called

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1   violation 1, PeopleSoft materials on Rimini's site, this

2   refers to the psptaxdt, the PeopleSoft functional user

3   documentation on G6, and the PeopleSoft tax update on Texas

4   Children's Hospital. You remember those topics.

5   A   I remember those topics, yes.

6   Q   Okay. Now, with respect to the psptaxdt.dms materials

7   that were on Rimini's system, in your opinion was there a

8   violation of Rimini's Acceptable Use Policy?

9   A   My understanding of the Acceptable Use Policy is that

10   Rimini's clients are told not to attach PeopleSoft software to

11   either an e-mail or SalesForce ticket, so the fact that that

12   happened would not be consistent with the Acceptable Use

13   Policy.

14   Q   And you heard Mr. Benge say that in his view what

15   happened there was a violation of the Acceptable Use Policy.

16   A   I heard Mr. Benge discuss that he had been reprimanded

17   for that as well.

18   Q   Right. And, in your opinion, is what was -- what

19   happened with the psptaxdt.dms materials a violation of the

20   injunction?

21   A   My understanding is that violation of the injunction

22   would be a legal determination, not something that I would do.

23   Q   Now, it hasn't been that long that we've been talking

24   together. I thought you just gave me the opinion before that

25   there's been no violation of the injunction in any respect

-1039-

1   based on the materials that you've reviewed from the

2   Frederiksen-Cross report which would include this topic.

3   Are you changing that testimony?

4   A   With -- as I discussed earlier today, I consider these

5   isolated so it's not my determination as to whether they're

6   being found on Rimini's system is a violation of the

7   injunction.

8   It would appear that having files on Rimini's system

9   is not consistent with their Acceptable Use Policy. Whether

10   that's a violation of the injunction is something that I

11   believe is a legal determination.

12   Q   I'm becoming confused about your perception of your role

13   here.

14   A few minutes ago you told me it was your opinion,

15   that you were giving the opinion in this case that there was

16   not a violation of the injunction in any respect based on the

17   materials that you reviewed from the Frederiksen-Cross report.

18   Now you seem to be saying it's not your position --

19   it not your position to be giving opinions about whether there

20   was a violation of the injunction.

21   A   It may have been --

22   Q   Are you changing your testimony?

23   A   When you asked me the earlier question, I was thinking

24   more about the cross-use issues rather than all the issues

25   before me, and that may have been in my mind when I answered

1   your question.

2   Q   So when I asked you whether you were giving an opinion

3   about a violation of the injunction in every respect, with

4   respect to everything in the Frederiksen-Cross materials, you

5   were only talking about cross-use.

6   A   When I said that I didn't think that there had been a

7   violation, I was referring to cross-use, yes.

8   Q   All right. Now, I'm still trying to understand your

9   role, as you view it, as an expert in this case.

10   You just told me that with respect to the PeopleSoft

11   files on Rimini's system, violation 1, that you did not think

12   it was your role to give opinions about whether there was a

13   violation of the injunction.

14   But do I understand it that for cross-use you do

15   think it's your role to give opinions about whether there's a

16   violation of the injunction.

17   A   I believe it's my role to respond in each case that

18   Ms. Frederiksen-Cross provided as to whether her analysis is

19   correct, and in the case of cross-use, as I explained earlier

20   today, I don't think her analysis is correct.

21   Q   Right.

22   A   In the case of having files on Rimini's system, there are

23   absolutely files on Rimini's system.

24   Q   Right. I don't think you're answering my question, sir,

25   so I'm going to ask it again, all right?

-1041-

1   You told me that with respect to the first

2   violation, it was not your role as an expert to reach a

3   conclusion about whether there's a violation of the

4   injunction. All right.

5   With respect to cross-use you told me, again a

6   matter of a minute or two ago, that, in your view, there was

7   no violation of the injunction, and that's what you were

8   thinking about when I asked you about whether -- your opinions

9   about whether there was a violation of the injunction.

10   When your -- is it your view -- what you're saying

11   is it's okay for you to give an opinion about whether there's

12   a violation of the injunction on some of these topics but not

13   others.

14   A   I'm happy to give an opinion on each of the aspects that

15   I have talked about today that are in response to

16   Ms. Frederiksen-Cross. So I would be happy to give an opinion

17   about the files that you're alluding to as well as to the

18   cross-use.

19   Q   Well, with respect to the PeopleSoft materials,

20   documentation, files that were found on the Rimini system with

21   respect to violation one, do you have an opinion about whether

22   there was a violation of the injunction?

23   A   I would need to see the wording of the injunction to be

24   sure, but absolutely there were files found on Rimini's system

25   and they were Oracle files.

1   Q   Right.   Is it -- once you heard they were violations of

2   the Acceptable Use Policy, was that sufficient for you to know

3   that they were violations of the injunction?

4   A   The Acceptable Use Policy doesn't enter into my

5   determination that they were found on the Rimini systems.

6   Q   Did you review the Acceptable Use Policy before doing

7   your reports or your depositions in this case?

8   A   I read the Acceptable Use Policy.   When I did that, I

9   don't recall.

10   Q   You didn't find it in your materials relied on in the --

11   for your reports.   Did you -- is this -- did you review the

12   Acceptable Use Policy for the first time in order to prepare

13   for trial?

14   A   No.

15   Q   Now, in terms of Oracle's IP that was uploaded to

16   SalesForce by Rimini clients, you understood that there were

17   844 instances of Oracle IP uploaded to SalesForce by Rimini

18   clients; is that correct?

19   A   No, I understand that Ms. Frederiksen-Cross discussed

20   many instances in her report, and I had an opinion in response

21   to that.   I don't recall how many I ultimately agreed might

22   have been.

23   MR. ISAACSON: Well, let me see if I can refresh

24   your memory here.

25   Can we look at his March 13th report at

—1043—

1   paragraph 211. We're going to show it to you. If you ever

2   need the reports, they're it's also in that binder that's been

3   handed to you.

4   THE WITNESS: What Tab number or what exhibit

5   number?

6   MR. ISAACSON: It's March 13th, it's towards the

7   back after the exhibits.

8   THE WITNESS: Okay.

9   MR. ISAACSON: And we're going to look in

10   paragraph 211.

11   THE WITNESS: Okay. I see that on the screen

12   and I have the report.

13   BY MR. ISAACSON:

14   Q   All right. And you see in the middle of that paragraph,

15   "I understand that out of 934 documents that

16   hit on Ms. Frederiksen-Cross' search, 844 of them,

17   more than 90 percent, were uploaded to SalesForce by

18   clients in violation of Rimini's policy."

19   Right? And you -- and what you were doing there

20   was responding to Ms. Frederiksen-Cross' report which is where

21   she had done, as referenced there, a search of Rimini's files

22   for Oracle copyrighted material and identified 934 documents,

23   and you looked at that and said, "I understand that 844 of

24   them were uploaded to SalesForce by clients."

25   A   Yes.

—1044—

1   Q   And you didn't question the accuracy of her search when

2   she found those 934 documents.

3   A   No, I did not.

4   Q   Okay. How did you determine that 844 of them were

5   uploaded to SalesForce by clients?

6   A   There were SalesForce tickets that discussed these as I

7   understand it.

8   Q   You went through SalesForce tickets for 844 of these and

9   determined that they came from clients?

10   A   Well, if they were SalesForce tickets, they would have

11   come from clients.

12   Q   So is it your -- so let me understand your work process

13   here, that if it was a SalesForce -- if it was uploaded -- so

14   you are just going by the fact that who did the upload.

15   Did you actually check those uploads?

16   A   I don't recall if I looked at all eight hundred and --

17   what's the number I used there?

18   Q   Eight hundred --

19   A   Forty-four.

20   Q   Eight hundred forty-four.

21   A   But when I write I understand that 90 percent of them

22   were uploaded, that would mean that that was represented to

23   me, and I checked some of them.

24   Q   Right. Then you talked to Mr. Butler about the 934

25   files, correct?

—1045—

1   A   Yes, that's correct.

2   Q   And after the injunction, when you talked to Mr. Butler,

3   you talked to him about two things that you can remember, one

4   was these 934 files, and the other was ten files that related

5   to violation 1. Do you recall that?

6   A   I'd have to look at my footnotes, but that seems

7   reasonable.

8   Q   I'm referring to your footnotes on page 70 and 114 of

9   your report.

10   You don't recall talking to Mr. Butler after the

11   injunction about any other topics; is that correct?

12   A   If I didn't reference it in that report, that would be

13   correct.

14   Q   Now, you say -- you go on to say,

15   "I also understand that every one" -- and you

16   put that in italics -- "of these 934 documents were

17   flagged by a Rimini employee as potentially

18   containing third-party intellectual property

19   materials."

20   I just want to stop there. Where did you go

21   that understanding from?

22   A   That would have been from Mr. Butler. That's why it's

23   referenced in that footnote.

24   Q   Well, it's -- actually the footnote is to the next

25   sentence. There is no footnote to this sentence.

-1046-

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 1              And I frankly don't understand where you were saying

 2     that after Barbara Frederiksen-Cross did a search and found

 3     934 documents, that you then say,

 4                  "I understand that every one of these 934

 5           documents were flagged by a Rimini employee as

 6           potentially containing third-party intellectual

 7           property materials."

 8                  Now, I know that the Frederiksen-Cross report

 9     flagged those.  I don't know who this Rimini employee is, do

10     you?

11      A    I'm reporting about the conversation I had with

12     Mr. Butler.

13      Q    Do you know who the Rimini employee is who flagged these

14     documents?

15      A    I don't know if it was one, many, or who -- no, I do not

16     know.

17      Q    You said -- you said one, singular.

18                  And when you had this conversation with Mr. Butler

19     did it strike you as something worth inquiring about that once

20     Ms. Frederiksen-Cross said, "Oh, I have flagged through the

21     search 934 files," that Mr. Butler was saying, "Well, we

22     already have a Rimini employee who has identified those"?

23      A    I don't recall, but the use of the word "a" to me doesn't

24     mean a single person, it means some, but I don't know if it

25     was one or many, and I did not follow up, that's correct.
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-1047-

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 1    Q    A Rimini employee doesn't mean one.  Okay.

 2              But whether it's one or some, the -- my question is

 3    are you saying that you learned that before the

 4    Frederiksen-Cross report that these reports had already --

 5    that these documents had already been flagged by Rimini?

 6    A    That's what I write here, yes.

 7    Q    So before the Frederiksen-Cross report revealed to the

 8    Court that there were 934 documents on their system that

 9    potentially contained third-party intellectual property

10    materials and that they were the exact 934 documents flagged

11    by Frederiksen-Cross, that that was all known beforehand for

12    her report by Rimini, that's what you found out.

13    A    I don't have that temporality in my report, nor do I

14    recall that.

15    Q    But that's what you wrote.

16    A    What I wrote is that Ms. Frederiksen-Cross says that 934

17    documents hit in her search, and that -- then I write that

18    "each of these documents was flagged by an employee."

19              So I didn't write that I had the conversation with

20    Mr. Butler before the report.  This is in response to her 934.

21    Q    Oh, I didn't mean to imply that you had the -- when you

22    had the conversation with Mr. Butler.  I only know it's after

23    the injunction.

24              So did you have the conversation with Mr. Butler

25    before or after the reports of Ms. Frederiksen-Cross?
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—1048—

1   A   That would have been after in responding to her report.

2   Q   Right. And after her report, and in terms of your work

3 in responding to the report, you found out that Rimini had

4 already flagged these documents.

5   A   As referenced by Mr. Butler, that's correct.

6   Q   And then Mr. Butler told you that all 934 documents were

7 locked down, quarantined, to make the file inaccessible, and

8 you actually say that twice in this paragraph. He told you

9 they were quarantined; is that right?

10   A   That's what he said, yes.

11   Q   And did you have an understanding of quarantined, where,

12 how?

13   A   I know that what Mr. Butler told me. I didn't look to

14 understand the quarantine process that might have been in

15 place.

16   Q   And you looked -- as a result of looking at the documents

17 in this case, you looked at these files and -- they're in

18 SalesForce, they're in e-mail files, and you saw them on a

19 nonquarantine basis, right?

20   A   I saw them as part of these e-mails and SalesForce

21 tickets; that's correct.

22   Q   And in your conversation with Mr. Butler was there any

23 suggestion that there more than 934 files in quarantine, or

24 was that it?

25   A   I don't recall.

-1049-

1   Q   Did you ask?

2   A   I can't recall.

3   Q   And you have never seen any actual documentation that any

4   of these files were quarantined.

5   A   That's correct.

6   Q   We can look at your slides DDX-550 and 51.

7   Now, this is the discussion of Johnson Controls, and

8   here you're discussing how the W2 update was not cross-use.

9   Do you recall this slide?

10   A   Yes.

11   Q   Now, these were not -- you discuss the Johnson Controls

12   issue in one paragraph of your report. Do you recall that?

13   A   If you represent to me that's what I did, that sounds

14   reasonable.

15   Q   And you didn't give any of these opinions in that

16   paragraph, did you?

17   A   I'd have to look to see. I don't recall my report

18   verbatim at this point.

19   MR. ISAACSON: All right. Can we look at

20   paragraph 278 of that report.

21   BY MR. ISAACSON:

22   Q   And, there, you can see a discussion of the bug fix and

23   JHN. Do you see that?

24   A   Yes.

25   Q   And you say that what the Frederiksen-Cross report has to

1 say is extremely misleading, and you talk about the Adobe

2 Acrobat .pdf form. Do you see that? Which you said is not

3 Oracle software.

4   A   That's correct.

5   Q   All right. You didn't discuss in your report whether the

6 City of Eugene was one of many clients affected by the bug,

7 correct?

8   A   That's correct. In this paragraph, I do not.

9   Q   And you didn't discuss whether testing the solution to

10 the bug in the City of Eugene's environment, for City of

11 Eugene, whether that was cross-use, right?

12   A   Yes. To be fair, this paragraph is discussing one aspect

13 of the update, which was to change the .pdf file font. It

14 does not discuss the other one that you're asking me about,

15 that's correct.

16   Q   And I agree on that.

17   The work that you did here for your testimony was

18 something you have just done in preparation for trial, reading

19 some documents and listening to some testimony that's going on

20 at trial. That's what's going on here, right?

21   A   Well, I did all the work before I listened to the

22 testimony.

23   Q   All right. And so if we can look at DTX-302, which is

24 the document that you were looking at -- and hopefully -- is

25 that in your binder? I think we need to hand that up. Well,

                                                                    —1051—

1   that's in your binder from counsel, from your counsel.

2   A   Do you have an exhibit number on this? Is it on this?

3   Q   DTX-302.

4   A   Oh, 302.

5   Q   I believe it was in the binder that counsel for Rimini

6   Street gave you for your direct testimony, and it was a

7   document that you discussed with him so you had to have it up

8   there.

9   A   Okay.

10   MR. ISAACSON: All right. And can we put that

11   on the screen at page 2.

12   BY MR. ISAACSON:

13   Q   And you read together, on page 2, an e-mail from

14   Mr. Ramachandran,

15   "Looks like this could be a potential problem

16   for all new clients."

17   And then up above that, at the top of the

18   page, "GPD, please let me know after you scope if you

19   think other clients could be impacted."

20   You recognize that scope refers to the scope

21   that goes into their system to determine who is going to be

22   getting an update, correct?

23   A   I know that one use of scope is in the Jira system,

24   that's correct.

25   Q   All right. Now, that's what you read, and you decided to

-1052-

1   read -- that was your choice to read those selections from the

2   document; is that right?

3   A   Well, yes.

4   Q   Now, we go to page 1, and Paula Smith writes to the

5   group, including to Jim Benge,

6   "We will handling this on a case-by-case

7   basis as it will depend on the data they report."

8   And you don't know whether City of Eugene was in

9   scope for this bug fix, you don't know whether they ever

10 provided data that would indicate they needed the bug fix, and

11 you don't know whether, when Rimini Street handled this on a

12 case-by-case basis, that was to include the City of Eugene.

13   You don't know any of those things, do you?

14   A   That's kind of a complicated question with many, many

15 parts so --

16   Q   It was a compound question, and I'll ask it three times

17 if you want, but I invite you to answer the question.

18   A   As I understand it, in the Jira system, scope is

19 something that can change.

20   And as I read these documents, it is my

21 understanding that the reason the update was made in the City

22 of Eugene's environment was because that was one of the

23 clients that would be in scope, as it were, in needing the

24 update.

25   Q   But you never saw the City of Eugene was in scope for

—1053—

1   this bug fix, correct?

2   A   I saw that US was in scope, and the City of Eugene is in

3   the US.

4   Q   That was -- and did you -- and what date were they in

5   scope -- was it in US in scope?

6   A   I'd have to review the Jira logs to see when it was and

7   when it wasn't.

8   Q   Right. You're not able to -- you're not able to do that

9   today, and I'm not going to ask you to do it today.

10   But you don't know the dates when City of Eugene was

11   in scope or out of scope, is that fair?

12   A   I don't know when the US was the scope completely. I

13   would have to look at the Jira logs to be able to answer

14   that with some authority.

15   Q   And you don't know -- I'm sorry. I didn't mean to

16   interrupt.

17   You don't know when the City of Eugene was ever --

18   was within -- was ever determined on a case -- as a part of

19   this case-by-case basis as needing the bug fix, you don't know

20   that, do you?

21   A   No.

22   Q   And you don't know whether they reported any data

23   indicating they needed a bug fix, correct?

24   A   I do not know that.

25   Q   And you could have asked Rimini people. You could have

-1054-

1   gone and said, "Did City of Oregon -- City of Eugene need the

2   bug fix? You know, I got this document, but it's not clear to

3   me," perhaps you're thinking that. You never went and asked

4   anyone, did you?

5   A   What I did ask is was the City of Eugene potentially

6   affected by the bug, and the answer I got was yes.

7   Q   From who?

8   A   From the Jira documents. I asked and was also informed

9   by talking -- well, I didn't speak with, but I heard Mr. Benge

10   discuss this.

11   Q   Are you referring to his testimony or discussion outside

12   of court?

13   A   No, I did not have a discussion with him outside of

14   court. I heard that here.

15   Q   Okay. So you're just relying on what Mr. Benge said and

16   Jira documents that you don't quite remember, right?

17   A   And the e-mail documents that you just had me reference.

18   Q   Right. And you never went to the engineers on this and

19   said -- or to Paula Smith, for that matter, who said,

20   "We will be handling this on a case-by-case

21   basis as it will depend on the data they report."

22   You never went to Paula Smith, or anybody else

23   with knowledge, to find out whether City of Eugene fell within

24   that case-by-case, or reported any of the necessary data.

25   You didn't do that, did you?

-1055-

1   A   I did not speak with Paula Smith.

2   MR. ISAACSON: Then if we could look at DDX-551.

3   BY MR. ISAACSON:

4   Q   This is another one of your slides about the reuse of

5   know-how, and, here, I think you said the Rimini engineers

6   knew the City of Eugene needed this bug fix, that the Rimini

7   engineers thought the City of Eugene was potentially affected

8   by a bug.

9   I think that's what you told us, right?

10   A   Well, I certainly knew that they were potentially

11   affected by the bug because they used this form.

12   Q   But you actually went beyond that and suggested that you

13   had an understanding based on your work about what the Rimini

14   engineers knew, and what the Rimini engineers were thinking.

15   That's what you were telling us, right?

16   A   I'm sorry, I don't understand your question.

17   Q   Okay.   Let me -- the transcript will say what it says.

18   But when you talked about what Rimini engineers

19   might have known and what the City of Eugene needed, right?

20   Ms. Frederiksen-Cross has to read the documents.

21   She can't go to Rimini Street and interview engineers and find

22   out what's going on.   You could.   You could actually do that,

23   and you didn't, did you?

24   A   I did not speak to Rimini engineers, that's correct.

25   Q   If we could look at your -- at 544, DDX-544, another one

-1056-

1   of your slides, this is your definition of derivative work.

2   A   No, I don't think so.

3   Q   Oops. Oh, cross-use, sorry. Yeah. This is your

4   definition of cross-use. Thanks.

5   And this is a definition provided to you by counsel;

6   is that right?

7   A   Well, as we can see in this slide, the permanent

8   injunction order says,

9   "Shall not reproduce, prepare derivative

10   works from, or use a specific licensee's PeopleSoft

11   software or documentation."

12   That's what I refer to as the yellow bullet 1,

13   "There must be a reproduction or a derivative

14   work," and then, "or use of a specific licensee's

15   PeopleSoft software documentation."

16   And then part 2 is the green, "Other than to

17   support the specific licensee's own internal data

18   processing operations."

19   So I'm meaning these two definitions to comport

20   with that injunction order.

21   Q   My pen just fell apart. I apologize.

22   And it's your view that if there was a reproduction

23   or derivative work of Oracle software by a Rimini client that

24   was not solely to support that client, that that would be

25   cross-use; is that right?

—1057—

1   A   I think that's what bullet number 2 says, but I'd want to

2   actually look at what your sentence is to be sure I got it

3   right.

4   Q   I think that's what it says, too. I just want to make

5   sure you agree with me.

6   It's the next page is your definition of derivative

7   work, and I think you said several times, "I understand this

8   is the definition of derivative work."

9   When you say you understand that, your understanding

10   is that's the legal definition of derivative work, and you

11   have obtained that from counsel.

12   A   That's correct. And as I, I think, mentioned to you in a

13   previous response, that's consistent with the definition of

14   derivative work that I've been given in other cases as well.

15   Q   By other lawyers.

16   A   That is correct.

17   Q   It's always nice when some lawyers agree.

18   The -- now, with respect to the cross-use issue,

19   which we call violation 4 with respect to Spherion and Smead

20   which you spent some time on, you are assuming that, as a

21   factual matter, that the City of Oregon [sic] environment was

22   used for testing, and not the environment of Spherion and

23   Smead because there was a problem common to many customers,

24   including the City of Eugene, correct?

25   A   Again, there was -- there are many parts to your

-1058-

1   statement, and as I've discussed earlier, these -- both I

2   wrote about, and we heard Mr. Benge and Ms. Davenport discuss,

3   that these were tested in the other environments. So that's

4   why I don't understand your question completely.

5   Q   I'm just trying to understand the factual assumptions

6   you're making.

7   I think we agree that the City of Eugene was used

8   for testing of the -- of the fix here that went to Spherion

9   and Smead. We agree on that?

10   A   No, I don't agree with your characterization of it.

11   Q   Okay.

12   A   The City of Eugene was used to test the fix in the City

13   of Eugene's environment for the City of Eugene.

14   Q   Right. And then that fix also went to Spherion and

15   Smead.

16   A   Where it was tested as well.

17   Q   Right. And your factual assumption is that when the

18   testing happened in the City of Eugene, there was a problem

19   common to many customers that included the City of Eugene.

20   A   I believe I stated that many customers would be affected

21   by this bug, and the City of Eugene was one of them. I

22   believe that is consistent with your statement.

23   Q   Okay. And you are also assuming that the City of Eugene

24   environment was not used simply because Rimini could not

25   access the environments of Spherion and Smead.

1   A   I did not say that, that's correct.

2   Q   Okay. I think I have achieved some level of negatives

3 here so I didn't understand your answer, but that may be the

4 problem with my question.

5   Did you have any understanding that the City of

6 Eugene environment was being used by Rimini because they could

7 not access the Spherion and Smead environments?

8   A   No, I did not have that understanding.

9   Q   Okay. And, on this issue, you didn't ask to interview

10 Tim Pringle or anyone from business affairs, right?

11   A   That's correct.

12   Q   You did interview Don Sheffield at some point, correct?

13   A   That sounds right.

14   Q   Did you talk to him about the 940 Schedule A issue?

15   A   I don't recall the complete substance of my conversation.

16   Q   And do you have any familiarity with the City of Eugene

17 PeopleSoft license?

18   A   No, I do not.

19   MR. ISAACSON: All right. Can we look at

20 DDX-559.

21 BY MR. ISAACSON:

22   Q   This was a chart you prepared -- well, did you prepare

23 this chart?

24   A   I worked with counsel to prepare my demonstratives. I

25 didn't actually edit the PowerPoint, but we discussed it and

-1060-

1   prepared it.

2   Q   Like who wrote the dates?

3   A   I understand that these dates are consistent with the

4   exhibits that are noted as the basis for each of them.

5   Q   That doesn't answer my question.

6   Who wrote dates on the slide?

7   A   Well, as I mentioned, I did not write the slide, but I

8   was there when the slides were created. So I certainly didn't

9   type January 25.

10   Q   Well, I don't know how you do your writing. Some of us

11   handwrite things out and then they are put on a slide. Some

12   of us type our own slides.

13   But did you write out in any fashion, you know,

14   these three dates with these three things happening, or was

15   this something you were just handed?

16   A   You use the word "write," and as I mentioned, I did not

17   write these, but it was a collaborative process of developing

18   these slides, and those dates are certainly dates that I agree

19   with.

20   Q   By collaborative process, do you mean that someone else

21   wrote a draft of this, handed it to you, and you ended up

22   agreeing with it?

23   A   No, That's not what I would describe as a collaborative

24   process, nor is it the process that was used in this

25   case.

—1061—

1   Q   All right. So can we look at -- so it says on -- the

2   first thing it says is that,

3   "On January 25th, 2019, Don Sheffield

4   modifies Rimini-created files and tests them in City

5   of Eugene's development environment for City of

6   Eugene."

7   And then you reference OREX _21 at 2, and so can

8   we look at OREX_21 which I think is in both your binders.

9   All right. And you can see there at the bottom

10   of 2, Mr. Sheffield says, "I have completed the testing in

11   COEX," City of Eugene.

12   A   Yes, I see that.

13   Q   All right. Now, if we go to page 3, Mr. Sheffield says,

14   on January 24th, "I tested in COEX." The testing happened on

15   January 24th, didn't it?

16   A   Well, that's certainly when this e-mail was written, yes.

17   Q   And the slide is inaccurate when it has that January 25th

18   date for your first entry there, correct? It should say

19   January 24th.

20   A   There's an e-mail that you just told me earlier that

21   says, "I have completed the testing, and have now ruled it

22   out." So --

23   Q   Right. He wrote on -- he said on the 24th, "I tested

24   it," and he wrote again on the 25th, "I've completed it."

25   The first time he says he tested it was the 24th,

-1062-

1   right?

2   A   And that's the first time he says he tested it, that's

3   correct?

4   Q   Right. Do you agree with me that this slide should say

5   January 24th?

6   A   I don't know if, in that e-mail from the 24th, which I --

7   you know, it says,

8   "I tested it so tomorrow morning I will get

9   the objects out to the clients and create the tech

10   doc."

11   That's what it says on the e-mail of the 24th.

12   Q   Do you know whether on January 24th, whether -- well, you

13   don't know on January 24th -- I think you told me this --

14   whether Rimini Street had any access to the Spherion or Smead

15   environments. You don't know that, right?

16   A   I don't -- I know that there were some issues in that

17   access. I don't know when that was.

18   Q   Right. And do you know whether City of Eugene was in

19   scope on January 24th?

20   A   What I -- I don't know, without looking at the Jira logs,

21   who was in scope, if that's what you mean. If you mean by in

22   scope in the Jira logs, I don't know that.

23   Q   Okay. And on January 24th, you don't know whether

24   the business analysis department had already made the

25   determination that this form, 940 Schedule A, was not needed,

-1063-

1   except for clients who were -- had operations in the Virgin

2   Islands. You don't know that.

3   A   I certainly don't know what they knew other than by the

4   e-mail I referenced which happened on January 28th.

5   Q   Right. And you were here when we discussed in court that

6   the IRS had said in a formal notice in November of 2018 that

7   this form was only required if you were -- for -- the credit

8   was only available for the Virgin Islands, the credit

9   reduction. You were here and saw that, right?

10 A   I was here when we saw that in the IRS form. It

11 indicated that there was a credit reduction in the

12 Virgin Islands.

13 Q   Right. And you saw that that was dated November of 2018,

14 right?

15 A   Yes.

16 Q   Okay. And over on your third column, you say,

17   "A Rimini business analyst determines update

18   will not be delivered to all clients for tax law

19   reason."

20   All right? That was Ms. Laurie Gardner and her

21 department, correct?

22 A   I believe that's correct, yes.

23 Q   Okay. You don't know when Ms. Gardner made that

24 determination, do you?

25 A   No, I only know when she sent that e-mail.

-1064-

1   Q   Right.   Exactly.

2   And you said on the stand that every client needed

3   this form when the testing was done, and that Rimini had made

4   that determination, but you don't actually know that, do you?

5   A   I was speaking of the developers who, it's my

6   understanding, thought that all US clients would potentially

7   need this.

8   I don't know how developers would have responded to

9   the legal analysis before the e-mail on the 28th.

10 Q   You thought all the developers were thinking that?

11 A   That's why, it's my understanding, that this was done in

12 the environments that needed it.

13   We saw e-mails that indicated it would be rolled

14 out -- the one you just showed me, it said, "We're rolling it

15 out to all US clients."

16   That's my understanding that that's what the

17 developers thought.

18 Q   All right.   So you read a document, and you say, "I know

19 what all the developers are thinking."

20 A   I obviously did not talk to all the developers so I

21 couldn't know what they are all thinking.   I know that what

22 Mr. Sheffield wrote in his e-mai, is it was intended that this

23 was going to roll out to all US clients.

24 Q   And I think -- it's not that you didn't to all them, you

25 didn't talk to a single one, did you?

-1065-

1   A   I did not talk to engineers, that's correct.

2   Q   All right. And you didn't talk to Laurie Gardner.

3   A   That's also correct.

4   Q   And you were here and heard that it was the business

5   analysis department that does the analysis to determine what

6   clients need what updates, right?

7   A   I heard that, yes.

8   Q   A developer is not sitting there thinking, "oh, I know

9   what tax form this" -- you know, "I know the City of Eugene

10   needs the 940 Schedule A." That's the business analysis

11   department decision, isn't it?

12   A   No. In this case, I can see in this e-mail from

13   Mr. Sheffield, who is an engineer, that he clearly thought all

14   US clients were going to receive it. It's clear from the

15   e-mail to me.

16   Q   And that's just your reading as a computer scientist of

17   an e-mail, right?

18   A   As a computer scientist who has worked with many

19   developers, that's correct.

20   Q   And when you said that -- in the middle column that

21   "Don Sheffield sends Rimini created files to US clients," what

22   environment did he send it to, what client environments?

23   A   It would have been sent using the transfer tools and the

24   Create Update Tools -- probably not the latter.

25   As it says here,

—1066—

1   "I know I need to know which of the document

2   artifact folders it would be added to. I notice the

3   scope in Jira was set to SPH. I changed it

4   temporarily to US so that I could use the create

5   update folder" -- sorry. I'll go again.

6   "I noticed the scope in Jira was set to

7   SPH," that's Spherion. "I changed it temporarily to

8   US so that I could use the CreateUpdateFolder tools

9   for all US clients that will ultimately get this

10   update."

11   Q   In order for the clients to actually get the updates,

12   they have to put it in their production environment from -- is

13   it from the QA environment? Is that right?

14   A   I'm not sure what your question is because you said

15   production environment and QA environment.

16   Q   Yeah. How does a client -- the client, in order to get

17   the update, it has to end up in their production environment,

18   right?

19   A   Rimini does not access the client's production

20   environment.

21   Q   I know, but they send -- exactly. They send out a notice

22   of some type saying to the client the update is available and

23   you should access it on the QA product -- maybe I'm wrong

24   about which environment, but not from the production

25   environment -- to the client in the production environment,

-1067-

1   gets a notice, and then they go in and they grab this update.

2   That's the general process, right?

3   A   That's -- it's reasonable that that's the general process

4   because informal and formal updates are different. But, in

5   either case, the client has to move it to their production

6   environment.

7   Q   Right. And there was never a determination that the City

8   of Eugene, or anybody besides Spherion, Smead, and Matheson,

9   needed this update and that the message should be sent, "go

10   grab this update." That never happened, did it?

11   A   Again, I'm not sure what your question is.

12   Is you question who was told to move it into

13   production?

14   Q   Yeah.

15   A   As I understand it, we see here, it will not be delivered

16   to all clients for tax law reasons, so not all clients were

17   told to move it into production. That seems very clear to me.

18   Q   I agree. Only three were, Spherion, Smead, and Matheson.

19   A   I know that they were. I don't know if they were the

20   only ones.

21   Q   Okay. And one other question on this topic. Did you

22   reach a conclusion as to whether there was a violation of the

23   injunction with respect to the Matheson aspect of this case?

24   Is that what you were testifying to on the stand?

25   A   No. As I understand it, that was something that the

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 1    Court had already made a decision regarding.

 2              MR. ISAACSON:  All right.  It's five o'clock,

 3    your Honor, and I'm done with this topic.

 4              THE COURT:  All right.  It is an appropriate

 5    time to take our weekend recess.  I'm sure everyone will enjoy

 6    a couple of days off to the extent they're able to be off.

 7              MR. ISAACSON:  Can I just do one piece of

 8    cleanup here?

 9              THE COURT:  Go ahead.

10              MR. ISAACSON:  I will hand up Exhibit 1352 which

11    was that piece of transcript which was admitted yesterday so

12    that the Court has a copy of it.

13              And then -- days are -- was it earlier today

14    that you talked about getting the findings of fact and

15    conclusions of law in two weeks?

16              THE COURT:  Well, two weeks from when we end.

17              MR. ISAACSON:  Right, Right.  And I quickly said

18    yes, and then everybody behind me advised me of, like, all

19    sorts of problems they have in the next two weeks, and we were

20    wondering if we could get three weeks.  We know there is no

21    objection from Rimini Street to that.

22              THE COURT:  All right.  I have no problem with

23    three weeks if that works for everyone.

24              MR. VANDEVELDE:  Yeah, no objection.

25              And I wanted to raise one housekeeping issue,
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-1069-

1   just on the timing for next week if your Honor --

2   THE COURT: Yes.

3   MR. VANDEVELDE: -- doesn't mind. Is that all

4   right?

5   THE COURT: Go ahead.

6   MR. VANDEVELDE: We talked about timing. I

7   think we are well under our three days still. We have two

8   more witnesses after Professor Astrachan. I think maybe,

9   collectively, they will be a half-a-day.

10   To the extent Oracle wants to do a rebuttal

11   case, if your Honor will permit it, we would just like advance

12   notice of whoever they intend to call.

13   MR. ISAACSON: We will do that.

14   MR. VANDEVELDE: Okay.

15   THE COURT: I would expect that, and I

16   appreciate it.

17   And at this point in time I see that everyone is

18   within their time that the Court had in mind for the case.

19   MR. VANDEVELDE: Thank you, your Honor.

20   THE COURT: All right.

21   So back to the weekend, enjoy it, and we'll see

22   you on Monday morning at 9:00 a.m.

23   MR. VANDEVELDE: Thank you, your Honor.

24   MR. ISAACSON: Thank you, your Honor.

25   (Proceedings were adjourned.)

1   -o0o-

2

3   I certify that the foregoing is a correct
         transcript from the record of proceedings

4   in the above-entitled matter.

5   /s/Margaret E. Griener   September 25, 2021
          Margaret E. Griener, CCR #3, FCRR

6   Official Reporter

7

8   I N D E X

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